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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 15th July, 2019:—

BILL No. 154 OF 2019

A Bill further to amend the Motor Vehicles Act, 1988.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Motor Vehicles (Amendment) Act, 2019.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

59 of 1988.

2. In the Motor Vehicles Act, 1988 (hereinafter referred to as the principal Act), in section 2,—

Amendment
of section 2.

(i) for clause (1), the following clauses shall be substituted, namely:—

‘(1) “adapted vehicle” means a motor vehicle either specially designed and constructed, or to which alterations have been made under sub-section (2)

of section 52, for the use of a person suffering from any physical defect or disability, and used solely by or for such person;

(1A) “aggregator” means a digital intermediary or market place for a passenger to connect with a driver for the purpose of transportation;

(1B) “area”, in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette;’;

(ii) after clause (4), the following clause shall be inserted, namely:—

‘(4A) “community service” means an unpaid work which a person is required to perform as a punishment for an offence committed under this Act;’;

(iii) after clause (9), the following clause shall be inserted, namely:—

‘(9A) “driver refresher training course” means the course referred to in sub-section (2A) of section 19;’;

(iv) after clause (12), the following clause shall be inserted, namely:—

‘(12A) “golden hour” means the time period lasting one hour following a traumatic injury during which there is highest likelihood of preventing death by providing prompt medical care;’;

(v) clause (18) shall be omitted;

(vi) in clause (24), for the words “invalid carriage”, the words “adapted vehicle” shall be substituted;

(vii) in clause (26), for the words “invalid carriage”, the words “adapted vehicle” shall be substituted;

(viii) after clause (38), the following clause shall be inserted, namely:—

‘(38A) “scheme” means a scheme framed under this Act;’;

(ix) after clause (42), the following clause shall be inserted, namely:—

‘(42A) “testing agency” means any entity designated as a testing agency under section 110B;’;

(x) in clause (49), after the word “rests”, the words “or moves” shall be inserted.

Insertion of
new section
2B.

Promotion of
innovation.

3. After section 2A of the principal Act, the following section shall be inserted, namely:—

“2B. Notwithstanding anything contained in this Act and subject to such conditions as may be prescribed by the Central Government, in order to promote innovation, research and development in the fields of vehicular engineering, mechanically propelled vehicles and transportation in general, the Central Government may exempt certain types of mechanically propelled vehicles from the application of the provisions of this Act.”.

Amendment
of section 8.

4. In section 8 of the principal Act,—

(i) in sub-section (1), for the words “the licensing authority having jurisdiction in the area”, the words “any of the licensing authority in the State” shall be substituted;

(ii) in sub-section (2), for the words “and with such fee”, the words “with such fee and submit in such manner, including electronic means” shall be substituted;

(iii) in sub-section (3),—

(a) after the word “application”, the words “to drive a transport vehicle made” shall be inserted;

(b) the proviso shall be omitted;

(iv) in sub-section (4), in the proviso, for the words “invalid carriage”, the words “adapted vehicle” shall be substituted;

(v) in sub-section (5), for the words “passes to the satisfaction of the licensing authority such test”, the words “satisfies such conditions” shall be substituted;

(vi) in sub-section (6), after the proviso, the following provisos shall be inserted, namely:—

“Provided further that a licencing authority may issue a learner’s licence in electronic form and such manner as may be prescribed by the Central Government:

Provided also that the licensing authority may, before issuing the license, verify the identity of the applicant in such manner as may be prescribed by the Central Government.”.

5. In section 9 of the principal Act,—

Amendment
of section 9.

(i) in sub-section (1), for the words “the licensing authority having jurisdiction in the area”, the words “any licensing authority in the State” shall be substituted;

(ii) in sub-section (3), for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that a driving licence for driving an adapted vehicle may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such motor vehicle.”;

(iii) in sub-section (4), the words “such minimum educational qualification as may be prescribed by the Central Government and” shall be omitted;

(iv) in sub-section (5), in the proviso, after the words “last such test”, the words and figures “and such applicant shall be required to complete a remedial driver training course from any school or establishment under section 12” shall be inserted.

6. In section 10 of the principal Act, in sub-section (2), in clause (c), for the words “invalid carriage”, the words “adapted vehicle” shall be substituted.

Amendment
of section 10.

7. In section 11 of the principal Act,—

Amendment
of section 11.

(i) in sub-section (1), for the words “the licensing authority having jurisdiction in the area”, the words “any licensing authority in the State” shall be substituted;

(ii) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that the licensing authority may, before issuing the license verify the identity of the applicant in such manner as may be prescribed by the Central Government.”.

8. In section 12 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

Amendment
of section 12.

“(5) Notwithstanding anything contained in any other provision, where any school or establishment has been accredited by a body notified by the Central Government under any other law for the time being in force, any person who has successfully completed a training module at such school or establishment covering a particular type of motor vehicle shall be eligible to obtain a driving licence for such type of motor vehicle.

(6) The curriculum of the training module referred to in sub-section (5) and the remedial driver training course referred to in sub-section (5) of section 9 shall be such as may be prescribed by the Central Government and that Government may make rules for the regulation of such schools or establishments.”.

Amendment
of section 14.

9. In section 14 of the principal Act, in sub-section (2),—

(i) in clause (a),—

(A) for the words “three years”, the words “five years” shall be substituted;

(B) in the proviso, for the portion beginning with the words “one year” and ending with the word “and” the words “three years and renewal thereof shall be subject to such conditions as the Central Government may prescribe; and”, shall be substituted;

(ii) for clause (b), the following clause shall be substituted, namely:—

“(b) in the case of any other licence, subject to such conditions as the Central Government may prescribe, if the person obtaining the licence, either originally or on renewal thereof,—

(i) has not attained the age of thirty years on the date of issue or, renewal thereof, be effective until the date on which such person attains the age of forty years; or

(ii) has attained the age of thirty years but has not attained the age of fifty years on the date of issue or, renewal thereof, be effective for a period of ten years from the date of such issue or renewal; or

(iii) has attained the age of fifty years but has not attained the age of fifty-five years on the date of issue or, renewal thereof, be effective until the date on which such person attains the age of sixty years; or

(iv) has attained the age of fifty-five years on the date of issue or as the case may be, renewal thereof, be effective for a period of five years from the date of such issue or renewal.”;

(iii) the proviso shall be omitted.

Amendment
of section 15.

10. In section 15 of the principal Act,—

(i) in sub-section (1), in the first proviso, for the words “more than thirty days”, the words “either one year prior to date of its expiry or within one year” shall be substituted;

(ii) in sub-section (3), for the words “thirty days”, the words “one year” shall be substituted; and

(iii) in sub-section (4),—

(a) for the words “thirty days”, the words “one year” shall be substituted; and

(b) in the second proviso for the words “five years after the driving licence has ceased to be effective, the licensing authority may”, the words “one year after the driving licence has ceased to be effective, the licensing authority shall” shall be substituted.

Amendment
of section 19.

11. In section 19 of the principal Act,—

(i) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where a licence has been forwarded to the licensing authority under sub-section (4) of section 206, the licensing authority, if satisfied after giving the holder of the driving licence an opportunity of being heard, may either discharge the holder of a driving licence or, it may for detailed reasons recorded in writing, make an order disqualifying such person from holding or obtaining any licence to drive all or any class or description of vehicles specified in the licence—

(a) for a first offence, for a period of three months;

(b) for a second or subsequent offence, with revocation of the driving licence of such person:

Provided that where a driving licence is revoked under this section, the name of the holder of such driving licence may be placed in the public domain in such manner as may be prescribed by the Central Government.”;

(ii) in sub-section (2),—

(a) after the word, brackets and figure “sub-section (I)”, the words, brackets, figure and letter “or sub-section (IA)” shall be inserted;

(b) for the proviso, the following proviso shall be substituted, namely:—

“Provided that the driving licence shall be returned to the holder at the end of the period of disqualification only if he successfully completes the driver refresher training course.”;

(iii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) The licence holder whose licence has been suspended shall undergo the driver refresher training course from a school or establishment licenced and regulated under section 12 or such other agency, as may be notified by the Central Government.

(2B) The nature, syllabus and duration of the driver refresher training course shall be such as may be prescribed by the Central Government.”;

(iv) in sub-section (3), after the word, brackets and figure “sub-section (I)”, the words, brackets, figure and letter “or sub-section (IA)” shall be inserted.

12. After section 25 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 25A.

“25A. (I) The Central Government shall maintain a National Register of Driving Licences in such form and manner as may be prescribed.

National Register of Driving Licences.

(2) All State Registers of Driving Licences shall be subsumed under the National Register of Driving Licences by a date to be notified by the Central Government.

(3) No driving licence issued, or renewed, under this Act shall be valid unless it has been issued a unique driving licence number under the National Register of Driving Licences.

(4) All State Governments and licensing authorities under this Act shall transmit all information including contained data in the State Register of Driving Licences in such form and manner as may be prescribed by the Central Government.

(5) The State Governments shall be entitled to access the National Register and update their records in such manner as may be prescribed by the Central Government.”.

13. For section 26 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 26.

“26. Each State Government shall maintain, in such form as may be prescribed by the Central Government, a register to be known as the State Register of Driving Licences, in respect of driving licences issued and renewed by the licensing authorities of the State Government, containing particulars, including—

Maintenance of State Registers of Driving Licences.

(a) names and addresses of holders of driving licences;

(b) licence numbers;

- (c) dates of issue or renewal of licences;
- (d) dates of expiry of licences;
- (e) classes and types of vehicles authorised to be driven; and
- (f) such other particulars as the Central Government may prescribe.”.

Amendment
of section 27.

14. In section 27 of the principal Act,—

(i) after clause (d), the following clauses shall be inserted, namely:—

“(da) the form and manner in which a licensing authority may issue a learner’s licence under sub-section (6) of section 8;

(db) the manner in which a licensing authority may verify the identity of the applicant under the third proviso to sub-section (6) of section 8;”;

(ii) after clause (j), the following clauses shall be inserted, namely:—

“(ja) the curriculum of training modules and the regulation of schools and establishments under sub-section (6) of section 12;

(jb) the conditions for the renewal of licence to drive transport vehicles carrying goods of dangerous or hazardous nature and other motor vehicles under clause (a) and clause (b) of sub-section (2) of section 14;

(jc) the manner in which a licensing authority may verify the identity of the applicant under the third proviso to sub-section (2) of section 11;”;

(iii) after clause (n), the following clauses shall be inserted, namely:—

“(na) the manner of placing in the public domain of the name of the licence holder as referred to in sub-section (1A) of section 19;

(nb) providing for the nature, syllabus and duration of the driver refresher training course as referred to in sub-section (2B) of section 19;”;

(iv) after clause (o), the following clause shall be inserted, namely:—

“(oa) all or any of the matters referred to in section 25A;”;

(v) in clause (p), the words, brackets and figure “sub-section (1) of” shall be omitted.

Amendment
of section 28.

15. In section 28 of the principal Act, in sub-section (2), clause (j) shall be omitted.

Amendment
of section 40.

16. In section 40 of the principal Act, for the words “a registering authority”, the words “any registering authority in the State” shall be substituted.

Amendment
of section 41.

17. In section 41 of the principal Act,—

(i) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in the case of a new motor vehicle, the application for registration in the State shall be made by the dealer of such motor vehicle, if the new motor vehicle is being registered in the same State in which the dealer is situated.”;

(ii) in sub-section (3),—

(a) for the words “to the owner of a motor vehicle registered by it a certificate of registration”, the words “a certificate of registration in the name of the owner” shall be substituted;

(iii) in sub-section (6), the following proviso shall be inserted, namely:—

“Provided that in case of a new motor vehicle, the application for the registration of which is made under the second proviso to sub-section (1), such motor vehicle shall not be delivered to the owner until such registration mark is displayed on the motor vehicle in such form and manner as may be prescribed by the Central Government.”;

(iv) in sub-section (7),—

(a) the words “other than a transport vehicle” shall be omitted; and

(b) after the words “date of issue of such certificate”, the words “or for such period as may be prescribed by the Central Government” shall be inserted;

(v) in sub-section (8), the words “other than a transport vehicle” shall be omitted;

(vi) in sub-section (10),—

(a) for the words “for a period of five years”, the words “for such period, as may be prescribed by the Central Government” shall be substituted;

(b) the following proviso shall be inserted, namely:—

“Provided that the Central Government may prescribe different period of renewal for different types of motor vehicles.”;

(vii) sub-sections (11), (12) and (13) shall be omitted.

18. For section 43 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section 43.

“43. Notwithstanding anything contained in section 40, the owner of a motor vehicle may apply to any registering authority or other authority as may be prescribed by the State Government to have the motor vehicle temporarily registered and such authority shall issue a temporary certificate of registration and temporary registration mark in accordance with such rules as may be made by the Central Government:

Temporary
Registration.

Provided that the State Government may register a motor vehicle that plies, temporarily, within the State and issue a certificate of registration and registration mark for a period of one month in such manner as may be prescribed by the State Government.”.

19. For section 44 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section 44.

“44. (1) Subject to such terms and conditions as may be prescribed by the Central Government in this behalf, a motor vehicle sold by an authorised dealer shall not require production before a registering authority for the purposes of registration for the first time.

Production of
vehicle at the
time of
registration.

(2) Subject to such terms and conditions as may be prescribed by the State Government, a person in whose name a certificate of registration has been issued shall not be required to produce the vehicle registered or transferred before a registering authority.”.

20. In section 49 of the principal Act,—

Amendment
of section 49.

(i) in sub-section (1), for the words “registering authority, to that other registering authority”, the words “State, to any registering authority in that State” shall be substituted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The intimation under sub-section (1) may be sent to the appropriate registering authority in electronic form along with the electronic form of such

documents, including proof of authentication in such manner as may be prescribed by the Central Government.”;

(iii) in sub-section (2), for the words “one hundred rupees”, the words “five hundred rupees” shall be substituted.

Amendment
of section 52.

21. In section 52 of the principal Act,—

(i) in sub-section (1), for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that the Central Government may prescribe specifications, conditions for approval, retrofitment and other related matters for the alteration of motor vehicles and in such cases, the warranty granted by the manufacturer shall not be considered as void for the purposes of such alteration or retrofitment.”;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) A manufacturer of a motor vehicle shall on the direction issued by the Central Government, alter or retrofit safety equipment, or any other equipment in accordance with such standards and specifications as may be specified by the Central Government.”;

(iii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Notwithstanding anything contained in sub-section (1), any person may, with the subsequent approval of the registering authority, alter or cause to be altered any vehicle owned by him to be converted into an adapted vehicle:

Provided that such alteration complies with such conditions as may be prescribed by the Central Government.”;

(iv) in sub-section (3), the words, brackets and figure “or by reason of replacement of its engine without such approval under sub-section (2)” shall be omitted.

Amendment
of section 55.

22. In section 55 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

“(5A) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction has been used in the commission of an offence punishable under section 199A, the authority may, after giving the owner an opportunity of making a representation in writing, cancel the certificate of registration of the vehicle for a period of one year:

Provided that the owner of the motor vehicle may apply for fresh registration in accordance with the provisions of section 40 and section 41.”.

Amendment
of section 56.

23. In section 56 of the principal Act,—

(i) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.”;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The “authorised testing station” referred to in sub-section (1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.”;

(iii) in sub-section (4), for the proviso, the following provisos shall be substituted, namely:—

“Provided that no such cancellation shall be made by the prescribed authority unless,—

(a) such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and

(b) the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:

Provided further that if the cancellation is confirmed by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.”;

(iv) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.

(7) Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles.”.

24. In section 59 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment of section 59.

“(4) The Central Government may, having regard to the public safety, convenience, protection of the environment and the objects of this Act, make rules prescribing the manner of recycling of motor vehicles and parts thereof which have exceeded their life.”.

25. After section 62 in the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 62A and 62B.

“62A. (1) No registering authority shall register any motor vehicle that contravenes any rule made under clause (a) of sub-section (1) of section 110.

(2) No prescribed authority or authorised testing station shall issue a certificate of fitness under section 56 to any motor vehicle that contravenes any rule made under section 110.

Prohibition of registration and issuance of certificate of fitness to oversized vehicles.

62B. (1) The Central Government shall maintain a National Register of Motor Vehicles in such form and manner as may be prescribed by it:

Provided that all State Registers of Motor Vehicles shall be subsumed under the National Register of Motor Vehicles by such date as may be notified in the Official Gazette by the Central Government.

National Register of Motor Vehicles.

(2) No certificate of registration issued, or renewed, under this Act shall be valid unless it has been issued a unique registration number under the National Register of Motor Vehicles.

(3) In order to maintain the National Register of Motor Vehicles, all State Governments and registering authorities under this Act shall transmit all information and data in the State Register of Motor Vehicles to the Central Government in such form and manner as may be prescribed by the Central Government.

(4) State Governments shall be able to access the National Register of Motor Vehicles and update records in accordance with the provisions of this Act and the rules made by the Central Government thereunder.”.

Substitution of new section for section 63.

26. For section 63 of the principal Act, the following section shall be substituted, namely:—

Maintenance of State Registers of motor vehicles.

“63. Each State Government shall maintain in such form as may be prescribed by the Central Government a register to be known as the State Register of Motor Vehicles, in respect of the motor vehicles in that State, containing the particulars including—

- (a) registration numbers;
- (b) years of manufacture;
- (c) classes and types;
- (d) names and addresses of registered owners; and
- (e) such other particulars as may be prescribed by the Central Government.”.

Amendment of section 64.

27. In section 64 of the principal Act,—

(i) after clause (d), the following clause shall be inserted, namely:—

“(da) providing for the period of validity of a certificate of registration under sub-section (7) of section 41;”;

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ea) the period of renewal of certificate of registration of different types of motor vehicles under sub-section (10) of section 41;”;

(iii) after clause (f), the following clauses shall be inserted, namely:—

“(fa) the issue of temporary certificate of registration and temporary registration mark under section 43;

(fb) the terms and conditions under which a motor vehicle sold by an authorised dealer shall not require production before a registering authority under sub-section (1) of section 44;”;

(iv) after clause (j), the following clause shall be inserted, namely:—

“(ja) the form and manner for the electronic submission of the intimation of change of address, documents to be submitted along with such intimation including proof of authentication under sub-section (1A) of section 49;”;

(v) after clause (l), the following clauses shall be inserted, namely:—

“(la) specifications, conditions for approval, retrofitment and other related matters for the alteration of motor vehicles under sub-section (1) of section 52;

(lb) the conditions for the alteration of any motor vehicle into an adapted vehicle under sub-section (2) of section 52;”;

(vi) after clause (n), the following clauses shall be inserted, namely:—

“(na) the distinguishing mark to be carried on the body of transport vehicles under sub-section (6) of section 56;

(nb) the conditions under which the application of section 56 may be extended to non-transport vehicles under sub-section (7) of section 56;

(nc) the recycling of motor vehicles and parts thereof which have exceeded their life under sub-section (4) of section 59;”;

(vii) after clause (o), the following clauses shall be inserted, namely:—

“(oa) all or any of the matters under sub-section (1) of section 62B;

(ob) all or any of the matters under sub-section (1) and sub-section (2) of section 63;”.

28. In section 65 of the principal Act, in sub-section (2),—

Amendment
of section 65.

(i) in clause (f), after the word “marks”, the words and figures “under the proviso to section 43” shall be inserted;

(ii) clause (o) shall be omitted.

29. In section 66 of the principal Act,—

Amendment
of section 66.

(i) in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that where a transport vehicle has been issued any permit or permits, as well as a licence under this Act, such vehicle may be used either under the permit, or permits, so issued to it, or under such licence, at the discretion of the vehicle owner.”;

(ii) in sub-section (3), after clause (p), the following clause shall be inserted, namely:—

“(q) to any transport vehicle having been issued a licence under a scheme, under sub-section (3) of section 67 or sub-section (1) of section 88A, or plying under such orders as may be issued by the Central Government or by the State Government.”.

30. After section 66 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
66A and 66B.

“66A. (1) The Central Government may develop a National Transportation Policy consistent with the objects of this Act in consultation with the State Governments and other agencies with a view to—

National
Transportation
Policy.

(i) establish a planning framework for passengers and goods transportation within which transport bodies are to operate;

(ii) establish a medium and long term planning framework for all forms of road transport, identify areas for the development of transport improvement infrastructure across India in consultation with the authorities and agencies related to ports, railways and aviation as well as with local and State level planning, land holding and regulatory authorities for the delivery of an integrated multimodal transport system;

(iii) establish the framework of grant of permits and schemes;

(iv) establish strategic policy for transport by road and its role as a link to other means of transport;

(v) identify strategic policies and specify priorities for the transport system that address current and future challenges;

(vi) provide medium to long term strategic directions, priorities and actions;

(vii) promote competition, innovation, increase in capacity, seamless mobility and greater efficiency in transport of goods or livestock or passengers, and economical use of resources;

(viii) safeguard the interest of the public and promote equity, while seeking to enhance private participation and public-private partnership in the transport sector;

(ix) demonstrate an integrated approach to transport and land use planning;

(x) identify the challenges that the National Transportation Policy seeks to address; and

(xi) address any other matter deemed relevant by the Central Government.

No bar against permit holders to apply and hold licences under schemes.

66B. No person who holds the permit issued under this Act shall—

(a) be disqualified from applying for a licence under the scheme made under sub-section (3) of section 67 or sub-section (1) of section 88A by reason of holding such permit; and

(b) be required to get such permit cancelled on being issued a licence under any scheme made under this Act.”.

Amendment of section 67.

31. In section 67 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) A State Government, having regard to—

(a) the advantages offered to the public, trade and industry by the development of motor transport,

(b) the desirability of co-ordinating road and rail transport,

(c) the desirability of preventing the deterioration of the road system, and

(d) promoting effective competition among the transport service providers,

may, from time to time, by notification in the Official Gazette issue directions both to the State Transport Authority and Regional Transport Authority regarding the passengers’ convenience, economically competitive fares, prevention of overcrowding and road safety.”;

(ii) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that the State Government may subject to such conditions as it may deem fit, and with a view to achieving the objectives specified in clause (d) of sub-section (1), relax all or any of the provisions made under this Chapter.”;

(iii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) Notwithstanding anything contained in this Act, the State Government may, by notification in the Official Gazette, modify any permit issued under this Act or make schemes for the transportation of goods and passengers and issue licences under such scheme for the promotion of development and efficiency in transportation—

(a) last mile connectivity;

(b) rural transport;

(c) reducing traffic congestion;

(d) improving urban transport;

(e) safety of road users;

(f) better utilisation of transportation assets;

(g) the enhancement of economic vitality of the area, through competitiveness, productivity and efficiency;

- (h) the increase in the accessibility and mobility of people;
- (i) the protection and enhancement of the environment;
- (j) the promotion of energy conservation;
- (k) improvement of the quality of life;
- (l) enhance integration and connectivity of the transportation system, across and between modes of transport; and
- (m) such other matters as the Central Government may deem fit.

(4) The scheme framed under sub-section (3), shall specify the fees to be charged, form of application and grant of a licence including the renewal, suspension, cancellation or modification of such licence.”.

32. In section 72 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:— Amendment of section 72.

“Provided that the Regional Transport Authority may waive any such condition for a stage carriage permit operating in a rural area, as it deems fit.”.

33. In section 74 of the principal Act,— Amendment of section 74.

(i) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that the Regional Transport Authority may in the interests of last mile connectivity waive any such condition in respect of any such types of vehicles as may be specified by the Central Government.”;

(ii) in sub-section (3), in the proviso to clause (b), after sub-clause (vi), the following sub-clause shall be inserted, namely:—

“(vii) self-help groups.”.

34. After section 88 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 88A.

“88A. (1) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, modify any permit issued under this Act or make schemes for national, multimodal and inter-State transportation of goods or passengers, and issue or modify licences under, such scheme for the following purposes, namely:—

- (a) last mile connectivity;
- (b) rural transport;
- (c) improving the movement of freight, and logistics;
- (d) better utilisation of transportation assets;
- (e) the enhancement to the economic vitality of the area, especially by enabling competitiveness, productivity and efficiency;
- (f) the increase in the accessibility and mobility of people;
- (g) the protection and enhancement of the environment;
- (h) the promotion of energy conservation;
- (i) improvement of the quality of life;
- (j) enhancement of the integration and connectivity of the transportation system, across and between modes of transport; and
- (k) such other matters as the Central Government may deem fit:

Power of Central Government to make schemes for national, multimodal and inter-State transport of passengers and goods.

Provided that the Central Government may, before taking any action under this sub-section consult the State Governments.

(2) Notwithstanding anything contained in sub-section (1), two or more States may make schemes for the operation within such States for the inter-State transportation of goods or passengers:

Provided that in the event of any repugnancy between the schemes made by the Central Government under sub-section (1) and schemes made by two or more States under this sub-section, the schemes made under sub-section (1) shall prevail.

Amendment
of section 92.

35. In section 92 of the principal Act, for the words “stage carriage or contract carriage, in respect of which a permit”, the words “transport vehicle, in respect of which a permit or licence” shall be substituted.

Amendment
of section 93.

36. In section 93 of the principal Act,—

(i) for the marginal heading, the following marginal heading shall be substituted, namely:—

“Agent or canvasser or aggregator to obtain licence.”;

(ii) in sub-section (1),—

(a) after clause (ii), the following clause shall be inserted, namely:—

“(iii) as an aggregator.”;

(b) the following provisos shall be inserted, namely:—

“Provided that while issuing the licence to an aggregator the State Government may follow such guidelines as may be issued by the Central Government:

Provided further that every aggregator shall comply with the provisions of the Information Technology Act, 2000 and the rules and regulations made thereunder.”. 21 of 2000.

Amendment
of section 94.

37. In section 94 of the principal Act, after the word “permit” occurring at both the places the words “or licence issued under any scheme” shall be inserted.

Amendment
of section 96.

38. In section 96 of the principal Act, in sub-section (2), after clause (xxvii), the following clauses shall be inserted, namely:—

“(xxviiia) framing of schemes under sub-section (3) of section 67;

(xxviiib) the promotion of effective competition, passenger convenience and safety, competitive fares and prevention of overcrowding.”.

Amendment
of section
110.

39. In section 110 of the principal Act,—

(i) in sub-section (1), in clause (k), after the words “standards of the components”, the words “, including software,” shall be inserted;

(ii) in sub-section (2), after the words “in particular circumstances”, the words “and such rules may lay down the procedure for investigation, the officers empowered to conduct such investigations, the procedure for hearing of such matters and the penalties to be levied thereunder” shall be inserted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Persons empowered under sub-section (2) to conduct investigations referred to in sub-section (2) shall have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) any other matter as may be prescribed.”.

40. After section 110 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
110A and
110B.

“110A. (1) The Central Government may, by order, direct a manufacturer to recall motor vehicles of a particular type or its variants, if—

Recall of
motor
vehicles.

(a) a defect in that particular type of motor vehicle may cause harm to the environment or to the driver or occupants of such motor vehicle or other road users; and

(b) a defect in that particular type of motor vehicle has been reported to the Central Government by—

(i) such percentage of owners, as the Central Government, may by notification in the Official Gazette, specify; or

(ii) a testing agency; or

(iii) any other source.

(2) Where the defect referred to in sub-section (1) lies in a motor vehicle component, the Central Government may, by order, direct a manufacturer to recall all motor vehicles which contain such component, regardless of the type or variants of such motor vehicle.

(3) A manufacturer whose vehicles are recalled under sub-section (1) or sub-section (2), shall—

(a) reimburse the buyers for the full cost of the motor vehicle, subject to any hire-purchase or lease-hypothecation agreement; or

(b) replace the defective motor vehicle with another motor vehicle of similar or better specifications which complies with the standards specified under this Act or repair it; and

(c) pay such fines and other dues in accordance with sub-section (6).

(4) Where a manufacturer notices a defect in a motor vehicle manufactured by him, he shall inform the Central Government of the defect and initiate recall proceedings and in such case the manufacturer shall not be liable to pay fine under sub-section (3).

(5) The Central Government may authorise any officer to conduct investigation under this section who shall have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) any other matter as may be prescribed.

(6) The Central Government may make rules for regulating the recall of motor vehicles, of a particular type or its variants, for any defect which in the opinion of the

Central Government, may cause harm to the environment or to the driver or occupants of such motor vehicle or to other road users.

Type-approval certificate and testing agencies.

110B. (1) No motor vehicle, including a trailer or semi-trailer or modular hydraulic trailer or side car shall be sold or delivered or offered for sale or delivery or used in a public place in India unless a type-approval certificate referred to in sub-section (2) has been issued in respect of such vehicle:

Provided that the Central Government may, by notification in the Official Gazette, extend the requirement of type-approval certificate to other vehicles drawn or intended to be drawn by a motor vehicle:

Provided further that such certificate shall not be required for vehicles which are—

(a) intended for export or display or demonstration or exhibition; or

(b) used by a manufacturer of motor vehicles or motor vehicle components or a research and development centre or a test by agency for testing and validation or for data collection, inside factory premises or in a non-public place; or

(c) exempted by the Central Government.

(2) The manufacturer or importer of motor vehicles including trailers, semi-trailers, modular hydraulic trailers and side cars shall submit the prototype of the vehicle to be manufactured or imported for test to a testing agency for obtaining a type-approval certificate by such agency.

(3) The Central Government shall make rules for the accreditation, registration and regulation of testing agencies.

(4) The testing agencies shall conduct tests on vehicles drawn from the production line of the manufacturer or obtained otherwise to verify the conformity of such vehicles to the provisions of this Chapter and the rules and regulations made thereunder.

(5) Where the motor vehicle having a type-approval certificate is recalled under section 110A, the testing agency which granted the certificate to such motor vehicle shall be liable for its accreditation and registration to be cancelled.”.

Amendment of section 114.

41. In section 114 of the principal Act, in sub-section (1), for the words “authorised in this behalf by the State Government”, the words “or any other person authorised in this behalf by the State Government” shall be substituted.

Amendment of section 116.

42. In section 116 of the principal Act,—

(i) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-section (1), the National Highways Authority of India constituted under the National Highways Authority of India Act, 1988 or any other agency authorised by the Central Government, may cause or permit traffic signs, as provided in the First Schedule, to be placed or erected or removed on national highways for the purpose of regulating motor vehicle traffic and may order the removal of any sign or advertisement which in its opinion is so placed as to obscure any traffic sign from view or is so similar in appearance to a traffic sign as to mislead or is likely to distract the attention or concentration of the driver:

68 of 1988.

Provided that for the purposes of this sub-section, the National Highway Authority of India or any other agency authorised by the Central Government may seek assistance from the authorities of the State Government and the said State Government shall provide such assistance.”.

(ii) in sub-section (3), after the words, brackets and figure “provided by sub-section (I)”, the words, brackets, figure and letter “or sub-section (IA)” shall be inserted.

43. In section 117 of the principal Act, the following provisos shall be inserted, namely:—

Amendment
of section
117.

“Provided that the State Government or the authorised authority shall, give primacy to the safety of road users and the free flow of traffic in determining such places:

Provided further that for the purpose of this section the National Highways Authority of India, constituted under the National Highways Authority of India Act, 1988 or any other agency authorised by the Central Government, may also determine such places.”.

68 of 1988.

44. For section 129 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section
129.

‘129. Every person, above four years of age, driving or riding or being carried on a motorcycle of any class or description shall, while in a public place, wear protective headgear conforming to such standards as may be prescribed by the Central Government:

Wearing of
protective
headgear.

Provided that the provisions of this section shall not apply to a person who is a Sikh, if, while driving or riding on the motorcycle, in a public place, he is wearing a turban:

Provided further that the Central Government may by rules provide for measures for the safety of children below four years of age riding or being carried on a motorcycle.

Explanation.— “Protective headgear” means a helmet which,—

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motorcycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear.’.

45. After section 134 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
134A.

“134A. (1) A Good Samaritan shall not be liable for any civil or criminal action for any injury to or death of the victim of an accident involving a motor vehicle, where such injury or death resulted from the Good Samaritan’s negligence in acting or failing to act while rendering emergency medical or non-medical care or assistance.

Protection of
Good
Samaritans.

(2) The Central Government may by rules provide for the procedure for questioning or examination of the Good Samaritan, disclosure of personal information of the Good Samaritan and such other related matters.

Explanation.—For the purposes of this section, “Good Samaritan” means a person, who in good faith, voluntarily and without expectation of any reward or compensation renders emergency medical or non-medical care or assistance at the scene of an accident to the victim or transports such victim to the hospital.

46. In section 135 of the principal Act,—

Amendment
of section
135.

(i) in sub-section (1),—

(a) in clause (c), the word “and” shall be omitted;

(b) in clause (d), for the word “highways”, the words “highways; and” shall be substituted; and

(ii) after clause (d), the following clause shall be inserted, namely:—

“(e) any other amenities in the interests of the safety and the convenience of the public.”;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The Central Government may, by notification in the Official Gazette, make one or more schemes to conduct in-depth studies on the causes and analysis of road accidents.”.

Insertion of
new section
136A.

47. After section 136 of the principal Act, the following section shall be inserted, namely:—

Electronic
monitoring
and
enforcement
of road safety.

‘136A. (1) The State Government shall ensure electronic monitoring and enforcement of road safety in the manner provided under sub-section (2) on national highways, state highways, roads or in any urban city within a State which has a population up to such limits as may be prescribed by the Central Government.

(2) The Central Government shall make rules for the electronic monitoring and enforcement of road safety including speed cameras, closed-circuit television cameras, speed guns, body wearable cameras and such other technology.

Explanation.—For the purpose of this section the expression “body wearable camera” means a mobile audio and video capture device worn on the body or uniform of a person authorised by the State Government.’.

Amendment
of section
137.

48. In section 137 of the principal Act,—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) providing for the standards of protective headgear and measures for the safety of children below the age of four years riding under section 129;”;

(ii) after clause (b), the following clause shall be inserted, namely:—

“(c) providing for limits of urban city by the State Governments under sub-section (1) of section 136A; and

(d) providing for electronic monitoring and enforcement under sub-section (2) of section 136A.”.

Amendment
of section
138.

49. In section 138 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The State Government may, in the interest of road safety, make rules for the purposes of regulating the activities and access of non-mechanically propelled vehicles and pedestrians to public places and national highways:

Provided that in the case of national highways, such rules shall be framed in consultation with the National Highways Authority of India.”.

Omission of
Chapter X.

50. Chapter X in the principal Act shall be omitted.

Substitution of
new Chapter
XI for
Chapter XI.

51. For Chapter XI of the principal Act, the following Chapter shall be substituted, namely:—

‘CHAPTER XI

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

145. In this Chapter,—

Definitions.

41 of 1999.

57 of 1972.

(a) “authorised insurer” means an insurer for the time being carrying on general insurance business in India and granted a certificate of registration by the Insurance Regulatory and Development Authority of India established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 and any Government insurance fund authorised to do general insurance business under the General Insurance Business (Nationalisation) Act, 1972;

(b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

45 of 1860.

(c) “grievous hurt” shall have the same meaning as assigned to it in section 320 of the Indian Penal Code;

(d) “hit and run motor accident” means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

41 of 1999.

(e) “Insurance Regulatory and Development Authority” means the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999;

(f) “policy of insurance” includes certificate of insurance;

(g) “property” includes roads, bridges, culverts, causeways, trees, posts, milestones and baggage of passengers and goods carried in any motor vehicle;

(h) “reciprocating country” means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Act;

(i) “third party” includes the Government, the driver and any other co-worker on a transport vehicle.

146. (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Necessity for insurance against third party risks.

6 of 1991.

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991.

Explanation.—For the purposes of this sub-section, a person driving a motor vehicle merely as a paid employee, while there is in relation to the use of the vehicle no such policy in force as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) The provisions of sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for purposes not connected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1), any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government, if the vehicle is used for purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State Transport Undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in such manner as may be prescribed by appropriate Government.

Explanation.—For the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and—

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State Transport Undertaking or any local authority, means that Government which has control over that undertaking or authority.

Requirement
of policies and
limits of
liability.

147. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Explanation.—For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed

matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.

(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority or to such other authority as the State Government may prescribe.

(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

148. Where, in pursuance of an arrangement between India and any reciprocating country, the motor vehicle registered in the reciprocating country operates on any route or within any area common to the two countries and there is in force in relation to the use of the vehicle in the reciprocating country, a policy of insurance complying with the requirements of the law of insurance for the time being in force in that country, then, notwithstanding anything contained in section 147 but subject to any rules which may be made under section 164B such policy of insurance shall be effective throughout the route or area in respect of which the arrangement has been made, as if the policy of insurance had complied with the requirements of this Chapter.

Validity of policies of insurance issued in reciprocating countries.

149. (1) The insurance company shall, upon receiving information of the accident, either from claimant or through accident information report or otherwise, designate an officer to settle the claims relating to such accident.

Settlement by insurance company and procedure therefor.

(2) An officer designated by the insurance company for processing the settlement of claim of compensation may make an offer to the claimant for settlement before the Claims Tribunal giving such details, within thirty days and after following such procedure as may be prescribed by the Central Government.

(3) If, the claimant to whom the offer is made under sub-section (2),—

(a) accepts such offer,—

(i) the Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent; and

(ii) the payment shall be made by the insurance company within a maximum period of thirty days from the date of receipt of such record of settlement;

(b) rejects such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits.

150. (1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 164 is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the award any sum not

Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

exceeding the sum assured payable thereunder, as if that person were the decree holder, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as its execution is stayed pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto, and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(A) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward; or

(B) for organised racing and speed testing; or

(C) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle; or

(D) without side-car being attached where the vehicle is a two-wheeled vehicle; or

(ii) a condition excluding driving by a named person or by any person who is not duly licenced or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification or driving under the influence of alcohol or drugs as laid down in section 185; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by nondisclosure of any material fact or by representation of any fact which was false in some material particular; or

(c) that there is non-receipt of premium as required under section 64VB of the Insurance Act, 1938.

4 of 1938.

(3) Where any such judgment or award as is referred to in sub-section (1) is obtained from a court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 and whether or not that person is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment or award were given by a court in India:

5 of 1908.

4 of 1938.

Provided that no sum shall be payable by the insurer in respect of any such judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby, by reference to any condition other than those in sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect.

(5) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

(6) If on the date of filing of any claim, the claimant is not aware of the insurance company with which the vehicle had been insured, it shall be the duty of the owner of the vehicle to furnish to the tribunal or court the information as to whether the vehicle had been insured on the date of the accident, and if so, the name of the insurance company with which it is insured.

Explanation.—For the purposes of this section,—

(a) “award” means an award made by the Claims Tribunal under section 168;

(b) “Claims Tribunal” means a Claims Tribunal constituted under section 165;

(c) “liability covered by the terms of the policy” means the liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy; and

(d) “material fact” and “material particular” mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he shall take the risk and, if so, at what premium and on what conditions.

151. (1) Where under any contract of insurance affected in accordance with the provisions of this Chapter, a person is insured against liabilities which he may incur to third party, then—

Rights of third party against insurers on insolvency of insured.

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors; or

(b) where the insured person is a company, in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to the company or of a receiver or manager of the company’s business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor’s rights against the insurer in respect of that liability shall,

notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting, either directly or indirectly, to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency, shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2), the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess amount; and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance amount.

152. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 147 shall, on demand by or on behalf of the person making the claim, refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making an arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give, on the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provision of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 151 and for the purpose of enforcing such rights, if any, and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supporting that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

Duty to give
information as
to insurance.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

153. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

Settlement between insurers and insured persons.

(2) The Claims Tribunal shall ensure that the settlement is *bona fide* and was not made under undue influence and the compensation is made in accordance with the payment schedule referred to in sub-section (1) of section 164.

(3) Where a person who is insured under a policy issued for the purpose of this Chapter has become insolvent, or where, if such insured person is a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding-up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid, shall be effective to defeat the rights transferred to the third party under this Chapter; but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

154. (1) For the purposes of sections 151, 152 and 153, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

Saving in respect of sections 151, 152 and 153.

(2) The provisions of sections 151, 152 and 153 shall not apply where a company is wound-up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

39 of 1925.

155. Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of such event against his estate or against the insurer.

Effect of death on certain causes of action.

156. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

Effect of certificate of insurance.

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

157. (1) Where a person, in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter, transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken

Transfer of certificate of insurance.

together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

Explanation.—For the removal of doubts, it is hereby clarified that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour, and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

158. (1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, produce—

- (a) the certificate of insurance;
- (b) the certificate of registration;
- (c) the pollution under control certificate;
- (d) the driving licence;
- (e) in the case of a transport vehicle, also the certificate of fitness referred to in section 56, and the permit; and
- (f) any certificate or authorisation of exemption that has been granted under this Act,

relating to the use of the vehicle.

(2) Where, owing to the presence of a motor vehicle in a public place, an accident occurs involving death or bodily injury to another person, if the driver of the vehicle does not at that time produce the required certificate, driving licence and permit referred to in sub-section (1) to a police officer, he or the owner shall produce the said certificates, licence and permit at the police station at which the driver makes the report required by section 134.

(3) No person shall be liable to conviction for offences under sub-section (1) or sub-section (2) by reason of the failure to produce the required certificate if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer-in-charge of the police station at which he reported the accident:

Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.

(4) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government for the purpose of determining whether the vehicle was or was not being driven in contravention of section 146 and on any occasion when the driver was required under this section to produce the certificate of insurance.

(5) In this section, the expression “produce the certificate of insurance” means production for examination the relevant certificate of insurance or such other evidence

Production of
certain
certificates,
licence and
permit in
certain cases.

as may be prescribed to prove that the vehicle was not being driven in contravention of section 146.

159. The police officer shall, during the investigation, prepare an accident information report to facilitate the settlement of claim in such form and manner, within three months and containing such particulars and submit the same to the Claims Tribunal and such other agency as may be prescribed.

Information to be given regarding accident.

160. A registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee, any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any, damaged in such form and within such time as the Central Government may prescribe.

Duty to furnish particulars of vehicle involved in accident.

161. (1) Notwithstanding anything contained in any other law for the time being in force or any instrument having the force of law, the Central Government shall provide for paying in accordance with the provisions of this Act and the scheme made under sub-section (3), compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

Special provisions as to compensation in case of hit and run motor accident.

(2) Subject to the provisions of this Act and the scheme made under sub-section (3), there shall be paid as compensation,—

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of two lakh rupees or such higher amount as may be prescribed by the Central Government;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of fifty thousand rupees or such higher amount as may be prescribed by the Central Government.

(3) The Central Government may, by notification in the Official Gazette, make a scheme specifying the manner in which the scheme shall be administered by the Central Government or General Insurance Council, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation under this section.

(4) A scheme made under sub-section (3) may provide that,—

(a) a payment of such sum as may be prescribed by the Central Government as interim relief to any claimant under such scheme;

(b) a contravention of any provision thereof shall be punishable with imprisonment which may extend to two years, or with fine which shall not be less than twenty-five thousand rupees but may extend to five lakh rupees or with both;

(c) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of Central Government, by such officer or authority to any other officer or authority.

162. (1) Notwithstanding anything contained in the General Insurance Companies (Nationalisation) Act, 1972 or any other law for the time being in force or any instrument having the force of law, the insurance companies for the time being carrying on general

Scheme for golden hour.

insurance business in India shall provide in accordance with the provisions of this Act and the schemes made under this Act for treatment of road accident victims, including during the golden hour.

(2) The Central Government shall make a scheme for the cashless treatment of victims of the accident during the golden hour and such scheme may contain provisions for creation of a fund for such treatment.

Refund in certain cases of compensation paid under section 161.

163. (1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law for the time being in force or otherwise, so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 161, shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle under any provision of this Act other than section 161 or any other law for the time being in force, the Claims Tribunal, court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such Tribunal, court or other authority shall—

(a) if compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub-section (1);

(b) if an application for payment of compensation is pending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation.—For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending—

(i) if such application has been rejected, till the date of the rejection of the application; and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

Payment of compensation in case of death or grievous hurt, etc.

164. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

Scheme for interim relief for claimants.

164A. (1) The Central Government, may make schemes for the provision of interim relief to claimants praying for compensation under this Chapter.

(2) A scheme made under sub-section (1) shall also provide for procedure to recover funds disbursed under such scheme from the owner of the motor vehicle, where the claim arises out of the use of such motor vehicle or other sources as may be prescribed by the Central Government.

164B. (1) The Central Government shall constitute a Fund to be called the Motor Vehicle Accident Fund and thereto shall be credited—

Motor Vehicle
Accident
Fund.

(a) payment of a nature notified and approved by the Central Government;

(b) any grant or loan made to the Fund by the Central Government;

(c) the balance of the Fund created under scheme framed under section 163, as it stood immediately before the commencement of the Motor Vehicles (Amendment) Act, 2019; and

(d) any other source of income as may be prescribed by the Central Government.

(2) The Fund shall be constituted for the purpose of providing compulsory insurance cover to all road users in the territory of India.

(3) The Fund shall be utilised for the following, namely:—

(a) treatment of the persons injured in road accidents in accordance with the scheme framed by the Central Government under section 162;

(b) compensation to representatives of a person who died in hit and run motor accident in accordance with schemes framed under section 161;

(c) compensation to a person grievously hurt in a hit and run motor accident in accordance with schemes framed under section 161; and

(d) compensation to such persons as may be prescribed by the Central Government.

(4) The maximum liability amount that shall be paid in each case shall be such as may be prescribed by the Central Government.

(5) In all cases specified in clause (a) of sub-section (3), when the claim of such person becomes payable, where amount has been paid out of this Fund to any person, the same amount shall be deductible from the claim received by such person from the insurance company.

(6) The Fund shall be managed by such authority or agency as the Central Government may specify having regard to the following:—

(a) knowledge of insurance business of the agency;

(b) capability of the agency to manage funds; and

(c) any other criteria as may be prescribed by the Central Government.

(7) The Central Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts of the Fund in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(8) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(9) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Fund under this Act shall have the same rights, privileges and authority in connection with such audit of the Government accounts and, in particular, shall have the right to demand the production

of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(10) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of the Parliament.

(11) Any scheme framed under sub-section (3) of section 161, as it stood immediately before the commencement of the Motor Vehicles (Amendment) Act, 2019, shall be discontinued and all rights and liabilities accruing thereunder shall be met out of the Fund with effect from the date of commencement of this Act.

Power of
Central
Government
to make rules.

164C. (1) The Central Government may make rules for the purposes of carrying into effect, the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the forms to be used for the purposes of this Chapter including,—

(i) the form of the insurance policy and the particulars it shall contain as referred to in sub-section (3) of section 147;

(ii) the form for making changes in regard to the fact of transfer in the certificate of insurance under sub-section (2) of section 157;

(iii) the form in which the accident information report may be prepared, the particulars it shall contain, the manner and the time for submitting the report to the Claims Tribunal and the other agency under section 159;

(iv) the form for furnishing information under section 160; and

(v) the form of the annual statement of accounts for the Motor Vehicle Accident Fund under sub-section (7) of section 164B;

(b) the making of applications for and the issue of certificates of insurance;

(c) the issue of duplicates to replace certificates of insurance lost, destroyed or mutilated;

(d) the custody, production, cancellation and surrender of certificates of insurance;

(e) the records to be maintained by insurers of policies of insurance issued under this Chapter;

(f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this Chapter;

(g) the furnishing of information respecting policies of insurance by insurers;

(h) adopting the provisions of this Chapter to vehicles brought into India by persons making only a temporary stay therein or to vehicles registered in a reciprocating country and operating on any route or within any area in India by applying those provisions with prescribed modifications;

(i) the requirements which a certificate of insurance is required to comply with as referred to in clause (b) of section 145;

(j) administration of the Fund established under sub-section (3) of section 146;

(k) the minimum premium and the maximum liability of an insurer under sub-section (2) of section 147;

(l) the conditions subject to which an insurance policy shall be issued and other matters related thereto as referred to in sub-section (3) of section 147;

(m) the details of settlement, the time limit for such settlement and the procedure thereof under sub-section (2) of section 149;

(n) the extent of exemptions and the modifications under the proviso to sub-section (3) of section 158;

(o) the other evidence under sub-section (5) of section 158;

(p) such other agency to which the accident information report as referred to in section 159 may be submitted;

(q) the time limit and fee for furnishing information under section 160;

(r) the higher amount of compensation in respect of death under clause (a) of sub-section (2) of section 161;

(s) a sum to be paid as interim relief as referred to in clause (a) of sub-section (4) of section 161;

(t) the procedure for payment of compensation under sub-section (1) of section 164;

(u) such other sources from which funds may be recovered for the scheme as referred to in sub-section (2) of section 164A;

(v) any other source of income that may be credited into the Motor Vehicle Accident Fund under sub-section (1) of section 164B;

(w) the persons to whom compensation may be paid under clause (d) of sub-section (3) of section 164B;

(x) the maximum liability amount under sub-section (4) of section 164B;

(y) the other criteria under clause (c) of sub-section (6) of section 164B;

(z) any other matter which is to be or may be prescribed or in respect of which provision is to be made by rules.

164D. (1) The State Government may make rules for the purposes of carrying into effect, the provisions of this Chapter other than the matters specified in section 164C. Power of State Government to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the other authority under sub-section (5) of section 147; and

(b) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made by rules.”.

52. In section 165 of the principal Act, in the *Explanation*, for the words, figures and letter "section 140 and section 163A", the word and figures "section 164" shall be substituted. Amendment of section 165.

53. In section 166 of the principal Act,—

(i) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.”.

Amendment of section 166.

(ii) in sub-section (2), the proviso shall be omitted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.”.

(iv) in sub-section (4), for the words, brackets and figures "sub-section (6) of section 158", the word and figures "section 159" shall be substituted;

(v) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.”.

Amendment
of section
168.

54. In section 168 of the principal Act, in sub-section (1),—

(i) for the words and figures “section 162”, the word and figures “section 163” shall be substituted;

(ii) the proviso shall be omitted.

Amendment
of section
169.

55. In section 169 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) For the purpose of enforcement of its award, the Claims Tribunal shall also have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such court in a civil suit.”. 5 of 1908.

Amendment
of section
170.

56. In section 170 of the principal Act, for the word and figures “section 149” the word and figures “section 150” shall be substituted.

Amendment
of section
173.

57. In section 173 of the principal Act, in sub-section (2), for the words “ten thousand”, the words “one lakh” shall be substituted.

Amendment
of section
177.

58. In section 177 of the principal Act, for the words “one hundred rupees” and “three hundred rupees”, the words “five hundred rupees” and “one thousand and five hundred rupees” shall respectively be substituted.

Insertion of
section 177A.

59. After section 177 of the principal Act, the following section shall be inserted, namely:—

Penalty for
contravention
of regulations
under section
118.

“177A. Whoever contravenes the regulations made under section 118, shall be punishable with fine which shall not be less than five hundred rupees, but may extend to one thousand rupees.”.

Amendment
of section
178.

60. In section 178 of the principal Act, in sub-section (3), in clause (b), for the words “two hundred rupees”, the words “five hundred rupees” shall be substituted.

Amendment
of section
179.

61. In section 179 of the principal Act,—

(i) in sub-section (1), for the words “five hundred rupees”, the words “two thousand rupees” shall be substituted;

(ii) in sub-section (2), for the words “five hundred rupees”, the words “two thousand rupees” shall be substituted.

- 62.** In section 180 of the principal Act, for the words "which may extend to one thousand rupees", the words "of five thousand rupees" shall be substituted. Amendment of section 180.
- 63.** In section 181 of the principal Act, for the words "which may extend to five hundred rupees", the words "of five thousand rupees" shall be substituted. Amendment of section 181.
- 64.** In section 182 of the principal Act,—
- (i) in sub-section (1), for the words "which may extend to five hundred rupees", the words "of ten thousand rupees" shall be substituted;
- (ii) in sub-section (2), for the words "one hundred rupees", the words "ten thousand rupees" shall be substituted. Amendment of section 182.
- 65.** For section 182A of the principal Act, the following sections shall be substituted, namely:— Substitution of new section for section 182A.
- “182A. (1) Whoever, being a manufacturer, importer or dealer of motor vehicles, sells or delivers or alters or offers to sell or deliver or alter, a motor vehicle that is in contravention of the provisions of Chapter VII or the rules and regulations made thereunder, shall be punishable with imprisonment for a term which may extend to one year, or with fine of one lakh rupees per such motor vehicle or with both:
- Provided that no person shall be convicted under this section if he proves that, at the time of sale or delivery or alteration or offer of sale or delivery or alteration of such motor vehicle, he had disclosed to the other party the manner in which such motor vehicle was in contravention of the provisions of Chapter VII or the rules and regulations made thereunder. Punishment for offences relating to construction, maintenance, sale and alteration of motor vehicles and components.
- (2) Whoever, being a manufacturer of motor vehicles, fails to comply with the provisions of Chapter VII or the rules and regulations made thereunder, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one hundred crore rupees or with both.
- (3) Whoever, sells or offers to sell, or permits the sale of any component of a motor vehicle which has been notified as a critical safety component by the Central Government and which does not comply with Chapter VII or the rules and regulations made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine of one lakh rupees per such component or with both.
- (4) Whoever, being the owner of a motor vehicle, alters a motor vehicle, including by way of retrofitting of motor vehicle parts, in a manner not permitted under the Act or the rules and regulations made thereunder shall be punishable with imprisonment for a term which may extend to six months, or with fine of five thousand rupees per such alteration or with both.
- 182B. Whoever contravenes the provisions of section 62A, shall be punishable with fine which shall not be less than five thousand rupees, but may extend to ten thousand rupees.”. Punishment for contravention of section 62A.
- 66.** In section 183 of the principal Act,—
- (i) in sub-section (1),—
- (a) after the words “Whoever drives”, the words “or causes any person who is employed by him or subjects someone under his control to drive” shall be inserted;
- (b) for the words "with fine which extend to four hundred rupees, or, if having been previously convicted of an offence under this sub-section is again
- Amendment of section 183.

convicted of an offence under this sub-section, with fine which may extend to one thousand rupees", the following shall be substituted, namely:—

“in the following manner, namely:—

(i) where such motor vehicle is a light motor vehicle with fine which shall not be less than one thousand rupees but may extend to two thousand rupees;

(ii) where such motor vehicle is a medium goods vehicle or a medium passenger vehicle or a heavy goods vehicle or a heavy passenger vehicle with fine which shall not be less than two thousand rupees, but may extend to four thousand rupees; and

(iii) for the second or any subsequent offence under this sub-section the driving licence of such driver shall be impounded as per the provisions of the sub-section (4) of section 206.”.

(ii) sub-section (2) shall be omitted.

(iii) in sub-section (3), after the word "mechanical", the words "or electronic" shall be inserted.

(iv) in sub-section (4), for the word, brackets and figure “sub-section (2)”, the word, brackets and figure “sub-section (1)” shall be substituted.

Amendment
of section
184.

67. In section 184 of the principal Act,—

(i) after the words “dangerous to the public”, the words “or which causes a sense of alarm or distress to the occupants of the vehicle, other road users, and persons near roads,” shall be inserted;

(ii) for the words “which may extend to six months or with fine which may extend to one thousand rupees”, the words “which may extend to one year but shall not be less than six months or with fine which shall not be less than one thousand rupees but may extend to five thousand rupees, or with both” shall be substituted;

(iii) for the words “which may extend to two thousand rupees”, the words “of ten thousand rupees” shall be substituted;

(iv) the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purpose of this section,—

(a) jumping a red light;

(b) violating a stop sign;

(c) use of handheld communications devices while driving;

(d) passing or overtaking other vehicles in a manner contrary to law;

(e) driving against the authorised flow of traffic; or

(f) driving in any manner that falls far below what would be expected of a competent and careful driver and where it would be obvious to a competent and careful driver that driving in that manner would be dangerous.”,

shall amount to driving in such manner which is dangerous to the public.

Amendment
of section
185.

68. In section 185 of the principal Act,—

(i) in clause (a), after the words “breath analyser,”, the words “or in any other test including a laboratory test,” shall be inserted;

(ii) for the words “which may extend to two thousand rupees”, the words “of ten thousand rupees” shall be substituted;

(iii) the words “ if committed within three years of the commission of the previous similar offence,” shall be omitted;

(iv) for the words “which may extend to three thousand rupees”, the words “of fifteen thousand rupees” shall be substituted;

(v) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

‘Explanation.—For the purposes of this section, the expression “drug” means any intoxicant other than alcohol, natural or synthetic, or any natural material or any salt, or preparation of such substance or material as may be notified by the Central Government under this Act and includes a narcotic drug and psychotropic substance as defined in clause (xiv) and clause (xxiii) of section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985.’.

61 of 1985.

69. In section 186 in the principal Act, for the words “two hundred rupees” and “five hundred rupees”, the words “one thousand rupees” and “two thousand rupees” shall respectively be substituted. Amendment of section 186.

70. In section 187 of the principal Act,— Amendment of section 187.

(i) for the brackets and letter “(c)” the brackets and letter “(a)” shall be substituted;

(ii) for the words “three months”, the words “six months” shall be substituted;

(iii) for the words “which may extend to five hundred rupees”, the words “of five thousand rupees” shall be substituted;

(iv) for the words “six months”, the words “one year” shall be substituted; and

(v) for the words “which may extend to one thousand rupees”, the words “of ten thousand rupees” shall be substituted.

71. In section 189 of the principal Act,— Amendment of section 189.

(i) for the words “one month”, the words “three months” shall be substituted;

(ii) for the words “which may extend to five hundred rupees”, the words “of five thousand rupees” shall be substituted;

(iii) after the words “with both”, the words, “and for a subsequent offence shall be punishable with imprisonment for a term which may extend to one year, or with fine of ten thousand rupees; or with both.” shall be inserted.

72. in section 190 of the principal Act,— Amendment of section 190.

(i) in sub-section (1),

(a) for the words “which may extend to two hundred and fifty rupees” the words “of one thousand five hundred rupees” shall be substituted;

(b) for the words “which may extend to one thousand rupees” the words “of five thousand rupees” shall be substituted; and

(c) after the words “with both”, the words, “and for a subsequent offence shall be punishable with imprisonment for a term which may extend to six months, or with a fine of ten thousand rupees for bodily injury or damage to property” shall be inserted.

(ii) in sub-section (2),—

(a) for the words “a fine of one thousand rupees”, the words “imprisonment for a term which may extend to three months, or with fine which may extend to

ten thousand rupees or with both and he shall be disqualified for holding licence for a period of three months” shall be substituted; and

(b) for the words “a fine of two thousand rupees” the words “imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both” shall be substituted;

(iii) in sub-section (3),—

(a) for the words “which may extend to three thousand rupees”, the words “with a fine of ten thousand rupees and he shall be disqualified for holding licence for a period of three months” shall be substituted; and

(b) for the words “which may extend to five thousand rupees”, the words “of twenty thousand rupees” shall be substituted.

Omission of section 191.

73. Section 191 of the principal Act shall be omitted.

Amendment of section 192.

74. In section 192 of the principal Act, the following *Explanation* shall be inserted, namely:—

“*Explanation.*—Use of a motor vehicle in contravention of the provisions of section 56 shall be deemed to be a contravention of the provisions of section 39 and shall be punishable in the same manner as provided in sub-section (1).”.

Amendment of section 192A.

75. In section 192A of the principal Act, in sub-section (1),—

(i) after the words “for the first offence with”, the words “imprisonment for a term which may extend to six months and” shall be inserted;

(ii) for the words “which may extend to five thousand rupees but shall not be less than two thousand rupees”, the words “of ten thousand rupees” shall be substituted;

(iii) for the words “three months”, the words “six months” shall be substituted;

(iv) for the words “which may extend to ten thousand rupees but shall not be less than five thousand rupees”, the words “of ten thousand rupees” shall be substituted.

Insertion of new section 192B.

76. After section 192A in the principal Act, the following section shall be inserted, namely:—

Offences relating to registration.

“192B. (1) Whoever, being the owner of a motor vehicle, fails to make an application for registration of such motor vehicle under sub-section (1) of section 41 shall be punishable with fine of five times the annual road tax or one-third of the lifetime tax of the motor vehicle whichever is higher.

(2) Whoever, being a dealer, fails to make an application for the registration of a new motor vehicle under the second proviso to sub-section (1) of section 41 shall be punishable with fine of fifteen times the annual road tax or the lifetime tax of the motor vehicle whichever is higher.

(3) Whoever, being the owner of a motor vehicle, obtains a certificate of registration for such vehicle on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration shall be punishable with imprisonment for a term which shall not be less than six months but may extend to one year and with fine equal to ten times the amount of the annual road tax or two-third the lifetime tax of the motor vehicle, whichever is higher.

(4) Whoever, being a dealer, obtains a certificate of registration for such vehicle on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration shall be punishable with imprisonment for a term which shall not be less than six months but may extend to one year and with fine equal to ten times the amount of annual road tax or two-third the lifetime tax of the motor vehicle, whichever is higher.”.

77. In the principal Act,—

Amendment
of section
193.

(A) in section 193, in the marginal heading, for the words "agents and canvassers", the words "agents, canvassers and aggregators" shall be substituted;

(B) section 193 shall be numbered as sub-section (I) thereof, and—

(i) in sub-section (I) as so numbered,—

(a) for the words “which may extend to one thousand rupees”, the words “of one thousand rupees” shall be substituted;

(b) for the words “which may extend to two thousand rupees”, the words “of two thousand rupees” shall be substituted;

(ii) after sub-section (I) as so numbered, the following sub-sections shall be inserted, namely:—

“(2) Whoever engages himself as an aggregator in contravention of the provisions of section 93 or of any rules made thereunder shall be punishable with fine up to one lakh rupees but shall not be less than twenty-five thousand rupees.

(3) Whoever, while operating as an aggregator contravenes a condition of the licence granted under sub-section (4) of section 93, not designated by the State Government as a material condition, shall be punishable with fine of five thousand rupees.”.

78. In section 194 of the principal Act,—

Amendment
of section
194.

(i) in sub-section (I),

(a) the word “minimum” shall be omitted;

(b) for the words “of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load”, the words “of twenty thousand rupees and an additional amount of two thousand rupees per tonne of excess load” shall be substituted;

(c) the following proviso shall be inserted, namely:—

“Provided that such motor vehicle shall not be allowed to move before such excess load is removed or is caused or allowed to be removed by the person in control of such motor vehicle.”.

(ii) after sub-section (I), the following sub-section shall be inserted, namely:—

“(1A) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven when such motor vehicle is loaded in such a manner that the load or any part thereof or anything extends laterally beyond the side of the body or to the front or to the rear or in height beyond the permissible limit shall be punishable with a fine of twenty thousand rupees, together with the liability to pay charges for off-loading of such load:

Provided that such motor vehicle shall not be allowed to move before such load is arranged in a manner such that there is no extension of the load

laterally beyond the side of the body or to the front or to the rear or in height beyond the permissible limit:

Provided further that nothing in this sub-section shall apply when such motor vehicle has been given an exemption by the competent authority authorised in this behalf, by the State Government or the Central Government, allowing the carriage of a particular load.”;

(iii) in sub-section (2), for the words, “which may extend to three thousand rupees” the words “of forty thousand rupees” shall be substituted.”.

79. After section 194 in the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 194A, 194B, 194C, 194D, 194E and 194F.

Carriage of excess passengers.

"194A. Whoever drives a transport vehicle or causes or allows a transport vehicle to be driven while carrying more passengers than is authorised in the registration certificate of such transport vehicle or the permit conditions applicable to such transport vehicle shall be punishable with a fine of two hundred rupees per excess passenger:

Provided that such transport vehicle shall not be allowed to move before the excess passengers are off-loaded and an alternative transport is arranged for such passengers.

Use of safety belts and the seating of children.

194B. (1) Whoever drives a motor vehicle without wearing a safety belt or carries passengers not wearing seat belts shall be punishable with a fine of one thousand rupees:

Provided that the State Government, may by notification in the Official Gazette, exclude the application of this sub-section to transport vehicles to carry standing passengers or other specified classes of transport vehicles.

(2) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven with a child who, not having attained the age of fourteen years, is not secured by a safety belt or a child restraint system shall be punishable with a fine of one thousand rupees.

Penalty for violation of safety measures for motor cycle drivers and pillion riders.

194C. Whoever drives a motor cycle or causes or allows a motor cycle to be driven in contravention of the provisions of section 128 or the rules or regulations made thereunder shall be punishable with a fine of one thousand rupees and he shall be disqualified for holding licence for a period of three months.

Penalty for not wearing protective headgear.

194D. Whoever drives a motor cycle or causes or allows a motor cycle to be driven in contravention of the provisions of section 129 or the rules or regulations made thereunder shall be punishable with a fine of one thousand rupees and he shall be disqualified for holding licence for a period of three months.

Failure of allow free passage to emergency vehicles.

194E. Whoever while driving a motor vehicle fails to draw to the side of the road, on the approach of a fire service vehicle or of an ambulance or other emergency vehicle as may be specified by the State Government, shall be punishable with imprisonment for a term which may extend to six months, or with a fine of ten thousand rupees or with both.

Use of horns and silence zones.

194F. Whoever—

(a) while driving a motor vehicle—

(i) sounds the horn needlessly or continuously or more than necessary to ensure safety, or

(ii) sounds the horn in an area with a traffic sign prohibiting the use of a horn, or

(b) drives a motor vehicle which makes use of a cut-out by which exhaust gases are released other than through the silencer,

shall be punishable with a fine of one thousand rupees and for a second or subsequent offence with a fine of two thousand rupees.”.

80. Section 195 of the principal Act shall be omitted.

Omission of section 195.

81. In section 196 of the principal Act,—

Amendment of section 196.

(i) after the word “shall be punishable”, the words “for the first offence” shall be inserted;

(ii) for the words “which may extend to one thousand rupees”, the words “of two thousand rupees,” shall be substituted; and

(iii) after the words “with both”, the words “, and for a subsequent offence shall be punishable with imprisonment for a term which may extend to three months, or with fine of four thousand rupees, or with both.” shall be inserted.

82. In section 197 of the principal Act,—

Amendment of section 197.

(i) in sub-section (1), for the words “which may extend to five hundred rupees”, the words “of five thousand rupees” shall be substituted;

(ii) in sub-section (2), for the words “which may extend to five hundred rupees” the words “of five thousand rupees” shall be substituted.

83. In section 198 of the principal Act, for the words “with fine which may extend to one hundred rupees”, the words “with fine of one thousand rupees” shall be substituted.

Amendment of section 198.

84. After section 198 of the principal act, the following section shall be inserted, namely:—

Insertion of new section 198A.

'198A. (1) Any designated authority, contractor, consultant or concessionaire responsible for the design or construction or maintenance of the safety standards of the road shall follow such design, construction and maintenance standards, as may be prescribed by the Central Government from time to time.

Failure to comply with standards for road design, construction and maintenance.

(2) Where failure on the part of the designated authority, contractor, consultant or concessionaire responsible under sub-section (1) to comply with standards for road design, construction and maintenance, results in death or disability, such authority or contractor or concessionaire shall be punishable with a fine which may extend to one lakh rupees and the same shall be paid to the Fund constituted under section 164B.

(3) For the purposes of sub-section (2), the court shall in particular have regard to the following matters, namely:—

(a) the characteristics of the road, and the nature and type of traffic which was reasonably expected to use it as per the design of road;

(b) the standard of maintenance norms applicable for a road of that character and use by such traffic;

(c) the state of repair in which road users would have expected to find the road;

(d) whether the designated authority responsible for the maintenance of the road knew, or could reasonably have been expected to know, that the condition of the part of the road to which the action relates was likely to cause danger to the road users;

(e) whether the designated authority responsible for the maintenance of the road could not reasonably have been expected to repair that part of the road before the cause of action arose;

(f) whether adequate warning notices through road signs, of its condition had been displayed; and

(g) such other matters as may be prescribed by the Central Government.

Explanation.—For the purposes of this section, the term “contractor” shall include sub-contractors and all such persons who are responsible for any stage in the design, construction and maintenance of a stretch of road.’.

Insertion of
new sections
199A and
199B.

85. After section 199 of the principal Act, the following sections shall be inserted, namely:—

Offences by
Juveniles.

“199A. (1) Where an offence under this Act has been committed by a juvenile, the guardian of such juvenile or the owner of the motor vehicle shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render such guardian or owner liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Explanation.—For the purposes of this section, the Court shall presume that the use of the motor vehicle by the juvenile was with the consent of the guardian of such juvenile or the owner of the motor vehicle, as the case may be.

(2) In addition to the penalty under sub-section (1), such guardian or owner shall be punishable with imprisonment for a term which may extend to three years and with a fine of twenty-five thousand rupees.

(3) The provisions of sub-section (1) and sub-section (2) shall not apply to such guardian or owner if the juvenile committing the offence had been granted a learner's licence under section 8 or a driving licence and was operating a motor vehicle which such juvenile was licensed to operate.

(4) Where an offence under this Act has been committed by a juvenile, the registration of the motor vehicle used in the commission of the offence shall be cancelled for a period of twelve months.

(5) Where an offence under this Act has been committed by a juvenile, then notwithstanding section 4 or section 7, such juvenile shall not be eligible to be granted a driving licence under section 9 or a learner's licence under section 8 until such juvenile has attained the age of twenty-five years.

(6) Where an offence under this Act has been committed by a juvenile, then such juvenile shall be punishable with such fines as provided in the Act while any custodial sentence may be modified as per the provisions of the Juvenile Justice Act, 2000.

199B. The fines as provided in this Act shall be increased by such amount not exceeding ten per cent. in value of the existing fines, on an annual basis on 1st day of April of each year from the date of commencement of the Motor Vehicles (Amendment) Act, 2019, as may be notified by the Central Government.”.

Revision of fines.

86. In section 200 of the principal Act,—

Amendment of section 200.

(i) in sub-section (1),—

(a) for the words, figures and brackets “punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of section 183, section 184, section 186, section 189, sub-section (2) of section 190, section 191, section 192, section 194, section 196, or section 198,” the words, brackets, figures and letters “punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (3) or sub-section (4) of section 182A, section 182B, sub-section (1) or sub-section (2) of section 183, section 184 only to the extent of use of handheld communication devices, section 186, section 189, sub-section (2) of section 190, section 192, section 192A, section 194, section 194A, section 194B, section 194C, section 194D, section 194E, section 194F, section 196, section 198, shall be substituted;

(b) the following proviso shall be inserted, namely:—

“Provided that the State Government may, in addition to such amount, require the offender to undertake a period of community service.”.

(ii) after sub-section (2), the following provisos shall be inserted, namely:—

“Provided that notwithstanding compounding under this section, such offence shall be deemed to be a previous commission of the same offence for the purpose of determining whether a subsequent offence has been committed:

Provided further that compounding of an offence will not discharge the offender from proceedings under sub-section (4) of section 206 or the obligation to complete a driver refresher training course, or the obligation to complete community service, if applicable.”.

87. In section 201 of the principal Act,—

Amendment of section 201.

(i) in sub-section (1),—

(a) the word “disabled” shall be omitted;

(b) for the words “fifty rupees per hour”, the words “five hundred rupees”, shall be substituted;

(c) in the second proviso, for the words “a Government Agency, towing charges”, the words “an agency authorised by the Central Government or State Government, removal charges” shall be substituted.

(ii) in sub-section (2), for the words “towing charges”, the words “removal charges” shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) sub-section (1) shall not apply where the motor vehicle has suffered an unforeseen breakdown and is in the process of being removed.”.

(iv) after sub-section (3), the following *Explanation* shall be inserted, namely:—

‘*Explanation.*—For the purposes of this section, “removal charges” includes any costs involved in the removal of the motor vehicle from one location to another and also includes any costs related to storage of such motor vehicle.’.

Amendment
of section
206.

88. In section 206 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) A police officer or other person authorised in this behalf by the State Government shall, if he has reason to believe that the driver of a motor vehicle has committed an offence under any of sections 183, 184, 185, 189, 190, 194C, 194D, or 194E, seize the driving licence held by such driver and forward it to the licensing authority for disqualification or revocation proceedings under section 19:

Provided that the person seizing the licence shall give to the person surrendering the licence a temporary acknowledgement therefor, but such acknowledgement shall not authorise the holder to drive until the licence has been returned to him.”.

Insertion of
new sections
210A, 210B,
210C and
210D.

89. After section 210 of the principal Act, the following sections shall be inserted, namely:—

Power of State
Government
to increase
penalties.

“210A. Subject to conditions made by the Central Government, a State Government, shall, by notification in the Official Gazette, specify a multiplier, not less than one and not greater than ten, to be applied to each fine under this Act and such modified fine, shall be in force in such State and different multipliers may be applied to different classes of motor vehicles as may be classified by the State Government for the purpose of this section.

Penalty for
offence
committed by
an enforcing
authority.

210B. Any authority that is empowered to enforce the provisions of this Act shall, if such authority commits an offence under this Act, shall be liable for twice the penalty corresponding to that offence under this Act.

Power of
Central
Government
to make rules.

210C. The Central Government may make rules for—

(a) design, construction and maintenance standards for National highways;

(b) such other factors as may be taken into account by the Court under sub-section (3) of section 198A;

(c) any other matter which is, or has to be, prescribed by the Central Government.

Power of State
Government
to make rules.

210D. The State Government may make rules for design, construction and maintenance standards for roads other than national highways, and for any other matter which is, or may be, prescribed by the State Government.”.

Insertion of
new section
211A.

90. After section 211 of the principal Act, the following section shall be inserted, namely:—

Use of
electronic
forms and
documents.

“211A. (1) Where any provision of this Act or the rules and regulations made thereunder provide for—

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the Central Government or the State Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction, approval or endorsement, by whatever name called in a particular manner; or

(c) the receipt or payment of money in a particular manner,

then notwithstanding anything contained in such provision, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the Central Government or the State Government, as the case may be.

(2) The Central Government or the State Government shall, for the purpose of sub-section (1), prescribe—

(a) the manner and format in which such electronic forms and documents shall be filed, created or issued; and

(b) the manner or method of payment of any fee or charges for filing, creation or issue of any electronic document under clause (a).”.

91. In section 212 of the principal Act,—

Amendment
of section
212.

(i) in sub-section (4),—

(a) after the words brackets and figures “the proviso to sub-section (1) of section 112”, the words and figures “section 118” shall be inserted;

(b) after the words, brackets, figures and letter “sub-section (4) of section 163A”, the words, figures and letter “section 164, section 177A” shall be inserted;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Every notification issued by the State Government under section 210A shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the House agrees or both Houses agree, as the case may be, in making any modification in the notification or the House agrees or both Houses agree, as the case may be, that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.”.

92. After section 215 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
215A, 215B,
215C and
215D.

“215A. Notwithstanding anything contained in this Act,—

Power of
Central
Government
and State
Government
to delegate.

(a) the Central Government shall have the power to delegate any power or functions that have been conferred upon it by the Act to any public servant or public authority and authorise such public servant or public authority to discharge any of its powers, functions and duties under this Act;

(b) the State Government shall have the power to delegate any power or functions that have been conferred upon it by the Act to any public servant or public authority and authorise such public servant or public authority to discharge any of its powers, functions and duties under this Act.

215B. (1) The Central Government shall, by notification in the Official Gazette, constitute a National Road Safety Board consisting of a Chairman, such number of representatives from the State Governments, and such other members as it may consider necessary and on such terms and conditions as may be prescribed by the Central Government.

National Road
Safety Board.

(2) The National Board shall render advice to the Central Government or State Government, as the case may be, on all aspects pertaining to road safety and traffic management including, but not limited to,—

- (a) the standards of design, weight, construction, manufacturing process, operation and maintenance of motor vehicles and of safety equipment;
- (b) the registration and licensing of motor vehicles;
- (c) the formulation of standards for road safety, road infrastructure and control of traffic;
- (d) the facilitation of safe and sustainable utilisation of road transport ecosystem;
- (e) the promotion of new vehicle technology;
- (f) the safety of vulnerable road users;
- (g) programmes for educating and sensitising drivers and other road users; and
- (h) such other functions as may be prescribed by the Central Government from time to time.

Power of
Central
Government
to make rules.

215C. (1) The Central Government may make rules for the purposes of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the use of electronic forms and means for the filing of documents, issue or grant of licence, permit, sanction, approval or endorsements and the receipt or payment of money as referred to in section 211A;
- (b) the minimum qualifications which the Motor Vehicles Department officers or any class thereof shall be required to possess for appointment as such, as referred to in sub-section (4) of section 213;
- (c) the terms and conditions of appointment of Chairman and Members of the National Road Safety Board under sub-section (1) of section 215B;
- (d) the other functions of the National Road Safety Board under sub-section (2) of section 215B; and
- (e) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made by rules by the Central Government.

Power of State
Government
to make rules.

215D. (1) The State Government may make rules for the purposes of carrying into effect, the provisions of this Chapter, other than the matters specified in section 215C.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the use of electronic forms and means for the filing of documents, issue or grant of licence, permit, sanction, approval or endorsements and the receipt or payment of money as referred to in section 211A;
- (b) the duties and functions of the officers of the Motor Vehicle Department, the powers to be exercised by such officers (including the powers exercisable by police officers under this Act) and the conditions governing the exercise of such powers, the uniform to be worn by them, the authorities to which they shall be subordinate as referred to in sub-section (3) of section 213;
- (c) such other powers as may be exercised by officers of the Motor Vehicles Department as referred to in clause (f) in sub-section (5) of section 213; and
- (d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made by rules by the State Government.”.

Omission of
Second
Schedule.

93. In the principal Act, the Second Schedule shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Motor Vehicles Act, 1988 (the Act), was enacted with a view to consolidate and amend the laws relating to motor vehicles. The Act was enacted to give effect to the suggestions made by the Supreme Court in *M.K. Kunhimohammed Vs P. A. Ahmedkutty* (1987) 4 SCC 284.

2. The Act was amended several times to adapt to the technological upgradation emerging in road transport, passenger and freight movement and in motor vehicle management. With rapidly increasing motorisation, India is facing an increasing burden of road traffic injuries and fatalities. The emotional and social trauma caused to the family which loses its bread winner, cannot be quantified. India is signatory to the Brasilia Declaration and is committed to reduce the number of road accident fatality by fifty per cent. by the year 2020. The road transport sector also plays a major role in the economy of the country.

3. Numerous representations and recommendations in the form of grievances and suggestions from various stakeholders have been received in the Ministry, citing cases of increase in road accidents, delay in issue of driving licences, the disregard of traffic rules and regulations, etc. Therefore, in order to improve road safety and transport system, certain amendments are required to be made in the Motor Vehicles Act, 1988 to address safety and efficiency issues in the transport sector.

4. In view of the above, it has become necessary to amend certain provisions of the said Act. The proposed Motor Vehicles (Amendment) Bill, 2019 seeks to address the issues relating to road safety, citizen facilitation, strengthening public transport, automation and computerisation.

5. The Motor Vehicles (Amendment) Bill, 2019, *inter alia*, provides for the following, namely:—

- (a) to facilitate grant of online learning licence;
- (b) to replace the existing provisions of insurance with simplified provisions in order to provide expeditious help to accident victims and their families;
- (c) to increase the time limit for renewal of driving licence from one month to one year before and after the expiry date;
- (d) to increase the period for renewal of transport licence from three years to five years;
- (e) to enable the licensing authority to grant licence even to the differently abled persons;
- (f) to enable the States to promote public transport, rural transport and last mile connectivity by relaxing any of the provisions of the Act pertaining to permits;
- (g) to increase the fines and penalties for violation of provisions of the Act; and
- (h) to make a provision for protection of Good Samaritans.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 4th July, 2019.

NITIN GADKARI

Notes on clauses

Clause 1 provides for the short title of the Bill as "The Motor Vehicles (Amendment) Act, 2019", and seeks to provide for the commencement of the provisions of the Bill from such date as may be notified by the Central Government and different dates may be appointed for different provisions of the Bill.

Clause 2 seeks to amend section 2 of the Motor Vehicles Act, 1988 (Act) relating to definitions of certain expressions used in the Act such as, 'medium passenger motor vehicle', 'motor car' and 'weight' and to insert some new definitions in section 2, such as, 'adapted vehicle', 'aggregator', 'community service', 'driver refresher training course', 'golden hour', 'scheme' and 'testing agency'.

Clause 3 seeks to insert a new section 2B in the Act to provide flexibility to the Central Government to exempt new technologies, inventions or innovations from the provisions of the Act so as to promote innovation, research and development in the fields of vehicular engineering, mechanically propelled vehicles and transportation in general.

Clause 4 seeks to amend section 8 of the Act to simplify the procedure for obtaining a learner's licence by enabling an applicant to apply to any licensing authority in the State, to use online means to submit the application, fee and other documents, and allow the government flexibility in determining the eligibility to obtain a learner's licence. It also seeks to provide for the issue of a learner's licence in electronic form. It enables the licensing authority to verify the identity of the applicant in a manner as prescribed by the Central Government.

Clause 5 seeks to amend section 9 of the Act to simplify the procedure for the grant of a driving licence by enabling an applicant to apply to any licensing authority in the State. It removes the requirement for minimum educational qualification as long as the applicant holds a certificate from a driver training school or establishment. It also seeks to provide that an applicant who fails the test of competence repeatedly shall be required to undergo a remedial driver training course before such applicant can apply again.

Clause 6 seeks to amend section 10 of the Act to replace the term 'invalid carriage' with the term 'adapted vehicle'.

Clause 7 seeks to amend section 11 of the Act so as to allow a licence holder to apply to any licensing authority in the State for the addition of other classes or descriptions of motor vehicles to his or her driving licence. It enables the licensing authority to verify the identity of the applicant in a manner as prescribed by the Central Government.

Clause 8 seeks to amend section 12 of the Act to allow applicants who have obtained specialised training that has been devised by the Central Government, from accredited schools or establishments, to drive without being required to meet other requirements, e.g. driving with light motor vehicle for at least one year before being granted a learner's licence to drive a transport vehicle.

Clause 9 seeks to amend section 14 of the Act to increase the length of time for which a driving licence shall remain valid.

Clause 10 seeks to amend section 15 of the Act to allow a licence holder to apply for renewal of licence any time in a window of one year before expiry of licence and one year after its expiry. It also seeks to provide that any applicant who attempts to renew his or her driving licence more than one year after its expiry shall have to undergo a test of competence.

Clause 11 seeks to amend section 19 of the Act to provide for disqualification from holding driving licence and revocation of driving licence of drivers found to commit certain offences specified in this section. It also seeks to provide that such licence holders shall be

required to complete a driver refresher training course, as prescribed by the Central Government.

Clause 12 seeks to insert a new section 25A in the Act to establish a National Register of Driving Licences containing data on all driving licences issued throughout India and facilitate the grant of licences in a transparent and efficient manner. It also seeks to enable the State Governments to transmit all information contained in the State Register of Driving Licences to the Central Government and to update the National Register in a manner to be prescribed by the Central Government. It also seeks to subsume all State Registers into the National Register by a date to be notified by the Central Government.

Clause 13 seeks to amend section 26 of the Act to omit the requirement on the part of the State Government to supply the Central Government with a copy of the State Register of Driving Licences.

Clause 14 seeks to amend section 27 of the Act in consequence of the amendments proposed in Chapter II of the Act.

Clause 15 seeks to amend section 28 of the Act so as to omit clause (j) of sub-section (2) of section 28. The said amendment is consequential in nature.

Clause 16 seeks to amend section 40 of the Act to allow an owner to register his motor vehicle by making an application to any registering authority in the State.

Clause 17 seeks to amend section 41 of the Act to provide for the registration of new motor vehicles by dealers. It also seeks to provide that new motor vehicles shall be delivered to the customers only after the affixation of the registration mark.

Clause 18 seeks to amend section 43 of the Act to enable the Central Government to make rules for the issue of temporary certificates of registration and temporary registration marks and it provides for an application for temporary registration to be made to a registering authority or any other authority as may be prescribed by the State Government.

Clause 19 seeks to amend section 44 of the Act to remove the requirement of the production of a motor vehicle before the registering authority at the time of registration.

Clause 20 seeks to amend section 49 of the Act to simplify the process for recording change of residence on registration certificate by means of online application process. It also seeks to enhance the penalty for failure to provide the new information in a timely manner.

Clause 21 seeks to amend section 52 of the Act to allow owners to alter or retrofit equipment to their motor vehicle and provides that the warranty granted by the manufacturer shall not be declared void when such alteration or retrofitment is done in accordance with specifications laid down by the Central Government. It also empowers the Central Government to require manufacturers to retrofit safety equipment on motor vehicles. It also seeks to enable the conversion of a motor vehicle into an adapted vehicle for use by persons with disabilities.

Clause 22 seeks to amend section 55 of the Act to provide for the cancellation of the registration of a motor vehicle which has been used by a juvenile in contravention of the provisions of the Act.

Clause 23 seeks to amend section 56 of the Act to provide for automated testing facilities at authorised testing stations for grant of certificates of fitness to motor vehicles and to ensure that no certificate of fitness shall be granted after such date as may be notified by the Central Government, unless the motor vehicle is tested at such automated testing facilities. It also empowers the Central Government to direct other motor vehicles, in addition to transport vehicles, to carry certificates of fitness. It also seeks to provide that transport vehicles with valid certificates of fitness shall carry clear visible distinguishable marks on their bodies.

Clause 24 seeks to amend section 59 of the Act to enable the Central Government to make rules for the recycling of motor vehicles and motor vehicle parts at the end of their life.

Clause 25 seeks to insert new provisions, viz., sections 62A and 62B in the Act. Section 62A seeks to prohibit the registration of oversized vehicles and issuance of certificates of fitness to such vehicles. Section 62B seeks to establish the National Register of Motor Vehicles that shall contain data on all motor vehicles registered throughout India. It also provides that no certificate of registration shall be issued or renewed unless it has been issued a unique registration number under the National Register. It also enables the State Governments to transmit information and data contained in the State Registers of Motor Vehicles to the National Register and update the National Register in accordance with rules as may be prescribed by the Central Government.

Clause 26 seeks to amend section 63 of the Act to enable the Central Government to prescribe the form in which a State Government shall supply the updated details of the State Register of Motor Vehicles to the Central Government.

Clause 27 seeks to amend section 64 of the Act in consequence of the amendments proposed in Chapter IV of the Act.

Clause 28 seeks to amend section 65 of the Act for clarifying the powers of the State Government.

Clause 29 seeks to amend section 66 of the Act to exempt transport vehicles, operating with a licence under a scheme for the transportation of goods and passengers made under the provisions of Chapter V of the Act from acquiring a permit. It also allows a transport vehicle which has been issued a permit or a licence to be used either under such permit or such licence at the discretion of the owner of the transport vehicle.

Clause 30 seeks to insert new provisions, viz., sections 66A and 66B in the Act. Section 66A seeks to empower the Central Government to develop and implement a National Transportation Policy. Section 66B seeks to provide that permit holders shall not be disqualified from applying for a licence under a scheme for the transportation of goods and passengers made under the provisions of Chapter V of the Act, nor shall such permit holder be required to surrender the permit on being issued such a licence.

Clause 31 seeks to amend section 67 of the Act to empower the State Government to issue directions to the State Transport Authority and the Regional Transport Authority to safeguard the convenience of passengers, prevent overcrowding, promote road safety and provide economically competitive fares. It also empowers the State Government to relax any of the provisions made under Chapter V and modify permits and make schemes for the transportation of goods and passengers to enhance last mile connectivity and rural transport, reduce traffic congestion, improve urban transport, promote safety of road users, better utilisation of transport assets, enhance regional economic vitality, increase accessibility and mobility, protect the environment, promote energy conservation, improve the quality of life and enhance multimodal integration among other purposes.

Clause 32 seeks to amend section 72 of the Act to empower the Regional Transport Authority to waive any permit condition for a stage carriage operating in a rural area.

Clause 33 seeks to amend section 74 of the Act in order to empower the Regional Transport Authority to waive any permit condition for a contract carriage to promote last mile connectivity solutions. It also seeks to facilitate empowerment of self-help groups through preference in issuance of permits.

Clause 34 seeks to insert a new section 88A in the Act to empower the Central Government to modify permits and make schemes for inter-state transport of goods and passengers.

Clause 35 seeks to amend section 92 of the Act in order to make void any contract for conveyance of a passenger in a transport vehicle licensed under a scheme made under

Chapter V that seeks to negative or restrict liability or imposes any conditions for the enforcement of liability for the death or bodily injury suffered by such passenger arising out of the use of such transport vehicle.

Clause 36 seeks to amend section 93 of the Act in order to provide statutory recognition to transport aggregators.

Clause 37 seeks to amend section 94 of the Act in order to oust the jurisdiction of civil courts to entertain any question or issue injunction relating to the issue of licences under a scheme made under Chapter V.

Clause 38 seeks to amend section 96 of the Act in consequence of the amendments proposed in Chapter V.

Clause 39 seeks to amend section 110 of the Act to provide for the enforcement of standards for construction, equipment and maintenance of motor vehicles.

Clause 40 seeks to insert new provisions, viz., sections 110A and 110B in the Act. Section 110A seeks to empower the Central Government to recall vehicles which do not meet standards and for making rules in this behalf. Section 110B seeks to provide for issue of type approval certificates and the accreditation, registration and regulation of testing agencies for testing of motor vehicles and for the making of rules in this behalf by the Central Government.

Clause 41 seeks to amend section 114 of the Act in order to enable State Governments to designate any person as an authority to enforce the provisions of this section.

Clause 42 seeks to amend section 116 of the Act in order to enable the National Highways Authority of India or any other agency authorised by the Central Government to construct traffic signs for highways and for this purpose, to enable the National Highways Authority of India or any other such agency as authorised by the Central Government to seek assistance from the authorities of the State Government.

Clause 43 seeks to amend section 117 of the Act to provide that the National Highways Authority of India or any other agency authorised by the Central Government may also determine parking places and halting stations.

Clause 44 seeks to substitute section 129 of the Act. The new section 129 exempts children below four years of age from the ambit of this provision and empowers the Central Government to make rules for additional measures for the safety of children below four years of age.

Clause 45 seeks to insert a new section 134A in the Act to protect Good Samaritans.

Clause 46 seeks to amend section 135 of the Act to empower the State Government to make schemes for any amenities that they deem fit in the interests of the public. It also empowers the Central Government to make schemes for in-depth studies on the causes and analysis of road accidents.

Clause 47 seeks to insert a new section 136A in the Act in order to allow electronic monitoring and enforcement of road safety.

Clause 48 seeks to amend section 137 of the Act in consequence of the amendments proposed in Chapter VIII.

Clause 49 seeks to amend section 138 of the Act in order to empower States to regulate pedestrians and non-mechanically propelled vehicles and that in the case of national highways such rules shall be framed in consultation with the National Highways Authority of India.

Clause 50 seeks to omit Chapter X of the Act because no fault liability has been provided for under section 164 of the new Chapter XI of the Act.

Clause 51 seeks to substitute Chapter XI of the Act with a new Chapter XI. This Chapter aims to simplify the third party insurance for motor vehicles. It empowers the Central Government to prescribe the minimum premium and the corresponding liability of the insurer for such a policy. It also provides for compensation on the basis of no-fault liability, scheme for the treatment of accident victims during the golden hour and provides for increase in the compensation to accident victims to five lakh rupees in the case of death and two and a half lakh rupees in the case of grievous hurt. It also provides a scheme for interim relief to be given to claimants.

Clause 52 seeks to amend section 165 of the Act in consequence of the amendments proposed in Chapters X and XI.

Clause 53 seeks to amend section 166 of the Act to ensure that a claim for compensation does not abate on the death of the claimant and may be continued by his legal representatives and that the application has to be made within six months from the date of occurrence of the accident.

Clause 54 seeks to amend section 168 of the Act in consequence of the amendment proposed in Chapters X and XI.

Clause 55 seeks to amend section 169 of the Act in order to confer powers of the Civil Court upon the Claims Tribunal with regard to execution of a decree passed by itself.

Clause 56 seeks to amend section 170 of the Act in consequence of the amendment proposed in Chapter XI.

Clause 57 seeks to amend section 173 of the Act in order to increase the amount in controversy required for an appeal from the decision of the Claims Tribunal to be heard by the High Court.

Clause 58 seeks to amend section 177 of the Act in order to enhance the general penalties.

Clause 59 seeks to insert a new section 177A in the Act in order to provide for penalties for violation of the Rules of the Road Regulations, 1989 and other regulations made under section 118 of the Act.

Clause 60 seeks to amend clause (b) of sub-section (3) of section 178 of the Act relating to penalties for travelling without pass or ticket, etc., so as to extend the penalty therein from two hundred rupees to five hundred rupees.

Clause 61 seeks to amend section 179 of the Act in order to enhance penalties for disobedience of orders, obstruction, etc.

Clause 62 seeks to amend section 180 of the Act in order to enhance penalty for allowing unauthorised persons to drive vehicles.

Clause 63 seeks to amend section 181 of the Act. It enhances penalty for driving vehicles in contravention of section 3 and section 4 of the Act.

Clause 64 seeks to amend section 182 of the Act, in order to enhance the penalties for offences relating to licences.

Clause 65 seeks to amend section 182A of the Act in order to enhance penalties for contravention of provisions of Chapter VII by manufacturers, importers, dealers and owners of motor vehicles. It is also proposed to insert a new section 182B in the Act in order to provide for penalty for contravention of section 62A for registration and issuance of certificate of fitness to oversized vehicles.

Clause 66 seeks to amend section 183 of the Act in order to enhance the penalties for driving at excessive speed and to provide for different penalties for different classes of motor vehicles.

Clause 67 seeks to amend section 184 of the Act in order to enhance penalties for driving dangerously. It also seeks to insert an *Explanation* giving examples of acts that are considered driving in a manner dangerous to the public.

Clause 68 seeks to amend section 185 of the Act in order to enhance the penalties for driving under the influence of alcohol or drugs.

Clause 69 seeks to amend section 186 of the Act in order to enhance the penalties for driving when mentally or physically unfit to drive.

Clause 70 seeks to amend section 187 of the Act in order to enhance the penalties for offences relating to accident.

Clause 71 seeks to amend section 189 of the Act in order to enhance the penalties for racing and trials of speed.

Clause 72 seeks to amend section 190 of the Act in order to enhance the penalties for using vehicle in unsafe condition.

Clause 73 seeks to omit section 191 of the Act, which deals with sale of vehicle in or alteration of vehicle to condition contravening the Act.

Clause 74 seeks to amend section 192 of the Act in order to provide that use of a motor vehicle in contravention of provisions regarding certificate of fitness shall be deemed as use of a motor vehicle not registered under the Act and shall be punishable in the same manner.

Clause 75 seeks to amend section 192A of the Act in order to enhance the penalties for using a motor vehicle in contravention of section 66.

Clause 76 seeks to insert a new section 192B in the Act to provide for imposition of penalty on an owner or dealer, as the case may be, for failure to make an application for registration and for false representation of facts or documents.

Clause 77 seeks to amend section 193 of the Act in order to enhance the penalties for agents and canvassers and provide for penalties for aggregators for contravening the provisions of section 93 and the conditions of licence.

Clause 78 seeks to amend section 194 of the Act in order to enhance the penalties for driving vehicle exceeding permissible weight. It also provides that a motor vehicle will not be allowed to move before excess load is removed.

Clause 79 seeks to insert new provisions, viz., sections 194A, 194B, 194C, 194D, 194E and 194F in the Act. Section 194A imposes a penalty for carriage of more passengers than authorised in the registration certificate. Section 194B imposes a penalty on persons for not wearing seat belts and for not seating children in a safe manner. Section 194C imposes a penalty for carriage of more than two persons, including the driver, on a motor cycle. Section 194D imposes a penalty on persons for not wearing protective headgear while driving or riding a motor cycle. Section 194E imposes a penalty for failing to draw to the side of the road to provide passage for an emergency vehicle. Section 194F imposes a penalty for sounding the horn unnecessarily in silence zones while driving a motor vehicle.

Clause 80 seeks to omit section 195 of the Act in order to eliminate discretion in the imposition of fine on an offender.

Clause 81 seeks to amend section 196 of the Act in order to enhance the penalties for driving an uninsured motor vehicle.

Clause 82 seeks to amend section 197 of the Act in order to enhance the penalties for taking a motor vehicle without authority.

Clause 83 seeks to amend section 198 of the Act in order to enhance the penalties for unauthorised interference with a motor vehicle.

Clause 84 seeks to insert a new section 198A in the Act in order to prescribe for penalties for failure to comply with standards for road design, construction and maintenance.

Clause 85 seeks to insert new provisions, viz., section 199A and section 199B in the Act to provide for liability of guardian or owner of vehicle, as the case might be, for any offence under this Act committed by a juvenile and the liability of juvenile. Section 199B has been inserted to provide for revision of fines.

Clause 86 seeks to amend section 200 of the Act to provide for the composition of certain offences under the Act.

Clause 87 seeks to amend section 201 of the Act to enhance the penalties for causing obstruction to free flow of traffic.

Clause 88 seeks to amend section 206 of the Act to empower police officers to impound the driving licence of a person accused of certain offences such as driving dangerously (section 184), etc., and forwarding the same for disqualification proceedings under section 19 of the Act.

Clause 89 seeks to insert new provision, viz., sections 210A, 210B, 210C and 210D in the Act. Section 210A empowers the State Governments to apply different multipliers to different fines and such multipliers may be different for different classes of motor vehicles. Section 210B provides for the imposition of twice the fine otherwise provided in the Act, whenever an offence is committed by any authority entrusted with the enforcement of the Act. Section 210C provides for the power of the Central Government to make rules. Section 210D provides for the power of the State Government to make rules.

Clause 90 seeks to insert a new section 211A in the Act to provide that all documents, forms and applications under this Act may be filed in an electronic format to be prescribed by the Central or State Governments, as may be applicable.

Clause 91 seeks to amend section 212 of the Act to provide for the laying in the State Legislature of notifications made under section 210A for legislative approval.

Clause 92 seeks to insert new provisions, viz., sections 215A, 215B, 215C and 215D in the Act. Section 215A enables the Central and State Governments to delegate any power or function to any public servant or public authority and authorise any public servant or public authority to discharge any of the powers, functions, or duties conferred under the Act. Section 215B enables the Central Government to constitute a National Road Safety Board. Section 215C enumerates the rule making powers granted to the Central Government under Chapter XIV of the Act. Section 215D enumerates the rule making powers granted to the State Government under Chapter XIV of the Act.

Clause 93 seeks to omit the Second Schedule of the Act which deals with compensation for third party fatal accidents or injury cases claims.

FINANCIAL MEMORANDUM

Clause 15 of the Motor Vehicles (Amendment) Bill, 2019 seeks to insert a new section 164B in the Act which provides for the establishment of the Motor Vehicle Accident Fund regarding compulsory insurance of all road users for the purposes of emergency medical treatment of victims of road accidents. The Fund may also be utilised for the purpose of providing compensation to the victims of road accidents and their families.

2. The expenditure from the Fund may be met from the Consolidated Fund of India through the budgetary provision under the Ministry of Road Transport and Highways and other sources as may be prescribed by the Central Government.

3. The quantum of funds required will depend on the detailed structure and activities undertaken through the Motor Vehicle Accident Fund and the limits of compensation shall be such as may be prescribed by the Central Government. Hence, the financial implications cannot be quantified now.

4. The Bill does not involve any other expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 14 of the Bill seeks to amend section 27 of the Act empowering the Central Government to make rules under Chapter II of the Act. The matters in respect of which the rules may be made, *inter alia*, include (a) the form and manner, including online issue, in which a licensing authority may issue a learner's licence; (b) the manner in which a licensing authority may verify the identity of the applicant; (c) the curriculum of training modules and the regulation of schools and establishments; (d) the conditions for renewal of licence to drive transport vehicles carrying goods of a dangerous or hazardous nature; (e) the nature and syllabus of driver refresher training courses; and (f) the National Register of Driving Licences.

Clause 27 of the Bill seeks to amend section 64 of the Act empowering the Central Government to make rules under Chapter IV of the Act.

Clause 39 of the Bill seeks to amend section 110 of the Act empowering the Central Government to make rules under Chapter VII of the Act. The matters in respect of which the rules may be made, *inter alia*, include (a) the standards of components including software components, and (b) investigation of non-compliance with the rules made under sub-section (1) of section 110.

Clause 40 of the Bill seeks to insert a new section 110A in the Act empowering the Central Government to make rules under Chapter VII of the Act for regulating the recall of motor vehicles for any defect which, in the opinion of the Central Government, may cause harm to the environment or to the driver or occupants of such motor vehicle or to other road users.

Clause 45 of the Bill seeks to insert a new section 134A in the Act empowering the Central Government to make rules for protection of Good Samaritans under Chapter VIII of the Act.

Clause 48 of the Bill seeks to amend section 137 of the Act empowering the Central Government to make rules under Chapter VIII of the Act.

Clause 51 of the Bill seeks to insert new section 164C to empower the Central Government to make rules under the substituted Chapter XI relating to insurance of motor vehicles against third party risks. It also seeks to insert new section 164D which empowers the State Government to make rules under the substituted Chapter XI for matters other than those specified under section 164C.

Clause 89 of the Bill seeks to insert Section 210C which empowers the Central Government to make rules for design, construction and maintenance standards for national highways. It also seeks to insert new section 210D which empowers the State Government to make rules for design, construction and maintenance standards for roads other than national highways.

Clause 92 of the Bill proposes to empower the Central Government and the State Government to make rules for the purposes of carrying out the provisions of the proposed legislation and the matters in respect of which the rules may be made have been enumerated in the proposed new sections 215C and 215D, respectively.

2. The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

THE SECOND SCHEDULE

(See section 163A)

SCHEDULE FOR COMPENSATION FOR THIRD PART FATAL
ACCIDENT/INJURY CASES CLAIMS1. *Fatal Accidents:*

Annual Income		Rs. 3000	Rs. 4200	Rs. 5400	Rs. 6600	Rs. 7800	Rs. 9000	Rs. 10200	Rs. 11400	Rs. 12000	Rs. 18000	Rs. 24000	Rs. 36000	Rs. 40000
AGE OF VICTIM	MULTIPLIER	RUPEES IN THOUSANDS compensation in case of death												
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Up to 15 Yrs	.....15	60	84	108	132	156	180	204	228	240	360	480	720	800
Above 15 yrs. but not exdgd. 20 yrs.	.....16	57	79.8	102	125.4	148.2	171	193.8	216.6	228	342	456	684	760
Above 20 yrs. but not exdgd. 25 yrs.	.....17	54	75.6	97.2	118.8	140.4	162	183.6	205.2	216	324	432	648	720
Above 25 yrs. but not exdgd. 30 yrs.	.....18	51	71.4	91.8	112.2	132.6	153	173.4	193.8	204	306	408	612	680
Above 30 yrs. but not exdgd. 35 yrs.	.....17	50	67.2	86.4	105.6	124.8	144	163.2	192.4	192	288	384	576	640
Above 35 yrs. but not exdgd. 40 yrs.	.....16	50	63	81	99	117	135	153	171	180	270	360	540	600
Above 40 yrs. but not exdgd. 45 yrs.	.....15	50	58.8	75.6	92.4	109.2	126	142.8	159.6	168	252	336	504	560
Above 45 yrs. but not exdgd. 50 yrs.	.....13	50	50.4	64.8	79.2	93.6	108	122.4	136.8	144	216	286	432	480
Above 50 yrs. but not exdgd. 55 yrs.	.....11	50	50	54	66	78	90	102	114	120	180	240	360	400
Above 55 yrs. but not exdgd. 60 yrs.	.....8	50	50	50	52.8	62.4	72	81.6	91.2	96	114	192	286	320
Above 60 yrs. but not exdgd. 65 yrs.	.....5	50	50	50	50	50	54	61.2	68.4	72	108	144	216	240
Above 65 yrs.	.....5	50	50	50	50	50	50	51	57	60	90	120	180	200

NOTE: The amount of compensation so arrived at the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive.

2. *Amount of compensation shall not be less than Rs. 50,000.*

3. *General Damages (in case of death):*

The following General Damages shall be payable in addition to compensations outlined above:

- (i) Funeral expenses — Rs. 2,000/-
- (ii) Loss of Consortium, if beneficiary is the spouse — Rs. 5,000/-
- (iii) Loss of Estate — Rs. 2,500/-
- (iv) Medical Expenses—Actual expenses incurred before death supported by bills/vouchers but not exceeding — Rs. 15,000/-

4. *General Damages in case of Injuries and Disabilities:*

- (i) Pain and Sufferings
 - (a) Grievous injuries — Rs. 5,000/-

- | | |
|--|----------------|
| (b) Non-grievous injuries | — Rs. 1,000/- |
| (ii) Medical Expenses—Actual expenses incurred supported by bills/vouchers but not exceeding as one time payment | — Rs. 15,000/- |

5. *Disability in non-fatal accidents:*

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents;

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks

PLUS either of the following—

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.

6. Notional income for compensation to those who had no income prior to accident:—

Fatal and disability in non-fatal accidents:—

- | | |
|-------------------------|--|
| (a) Non-earning persons | — Rs. 15,000 p.a. |
| (b) Spouse | — Rs. 1/3rd of income of the earning/surviving spouse. |

In case of the other injuries only "general damage" as applicable.

BILL NO. 156 OF 2019

A Bill to constitute National Surrogacy Board, State Surrogacy Boards and appointment of appropriate authorities for regulation of the practice and process of surrogacy and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Surrogacy (Regulation) Act, 2019.
(2) It extends to the whole of India except the State of Jammu and Kashmir.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commencement.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “abandoned child” means a child born out of surrogacy procedure who has been deserted by his intending parents or guardians and declared as abandoned by the appropriate authority after due enquiry;

(b) “altruistic surrogacy” means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative;

(c) “appropriate authority” means the appropriate authority appointed under section 32;

(d) “Board” means the National Surrogacy Board constituted under section 14;

(e) “clinical establishment” shall have the same meaning as assigned to it in the Clinical Establishments (Registration and Regulation) Act, 2010;

23 of 2010.

(f) “commercial surrogacy” means commercialisation of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses incurred on the surrogate mother and the insurance coverage for the surrogate mother;

(g) “couple” means the legally married Indian man and woman above the age of 21 years and 18 years respectively;

(h) “egg” includes the female gamete;

(i) “embryo” means a developing or developed organism after fertilisation till the end of fifty-six days;

(j) “embryologist” means a person who possesses any post-graduate medical qualification in the field of human embryology recognised under the Indian Medical Council Act, 1956 or who possesses a post-graduate degree in human embryology from a recognised university with not less than two years of clinical experience;

102 of 1956.

(k) “fertilisation” means the penetration of the ovum by the spermatozoan and fusion of genetic materials resulting in the development of a zygote;

(l) “foetus” means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth;

(m) “gamete” means sperm and oocyte;

(n) “gynaecologist” shall have the same meaning as assigned to it in the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994;

57 of 1994.

(o) “implantation” means the attachment and subsequent penetration by the zona-free blastocyst, which starts five to seven days following fertilisation;

(p) “infertility” means the inability to conceive after five years of unprotected coitus or other proven medical condition preventing a couple from conception;

(q) “insurance” means an arrangement by which a company, individual or intending couple undertake to provide a guarantee of compensation for specified loss, damage, illness or death of surrogate mother during the process of surrogacy;

(r) “intending couple” means a couple who have been medically certified to be an infertile couple and who intend to become parents through surrogacy;

(s) “Member” means a Member of the National Surrogacy Board or a State Surrogacy Board, as the case may be;

(t) “notification” means a notification published in the Official Gazette;

(u) “oocyte” means naturally ovulating oocyte in the female genetic tract;

102 of 1956. (v) “Paediatrician” means a person who possesses a post-graduate qualification in pediatrics as recognised under the Indian Medical Council Act, 1956;

(w) “prescribed” means prescribed by rules made under this Act;

102 of 1956. (x) “registered medical practitioner” means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register;

(y) “regulation” means regulations made by the Board under this Act;

57 of 1994. (z) “sex selection” shall have the same meaning as assigned to it in clause (o) of section 2 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994;

(za) “State Board” means the State Surrogacy Board constituted under section 23;

(zb) “State Government” in relation to Union territory with Legislature, means the Administrator of the Union territory appointed by the President under article 239 of the Constitution;

(zc) “surrogacy” means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth;

(zd) “surrogacy clinic” means surrogacy clinic, centre or laboratory, conducting assisted reproductive technology services, invitro fertilisation services, genetic counseling centre, genetic laboratory, Assisted Reproductive Technology Banks conducting surrogacy procedure or any clinical establishment, by whatsoever name called, conducting surrogacy procedures in any form;

(ze) “surrogacy procedures” means all gynaecological, obstetrical or medical procedures, techniques, tests, practices or services involving handling of human gametes and human embryo in surrogacy;

(zf) “surrogate mother” means a woman bearing a child (who is genetically related to the intending couple) through surrogacy from the implantation of embryo in her womb and fulfils the conditions as provided in sub-clause (b) of clause (iii) of section 4;

(zg) “zygote” means the fertilised oocyte prior to the first cell division.

CHAPTER II

REGULATION OF SURROGACY CLINICS

3. On and from the date of commencement of this Act,—

(i) no surrogacy clinic, unless registered under this Act, shall conduct or associate with, or help in any manner, in conducting activities relating to surrogacy and surrogacy procedures;

(ii) no surrogacy clinic, paediatrician, gynaecologist, embryologist, registered medical practitioner or any person shall conduct, offer, undertake, promote or associate with or avail of commercial surrogacy in any form;

(iii) no surrogacy clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment, who does not possess such qualifications as may be prescribed;

Prohibition
and regulation
of surrogacy
clinics.

(iv) no registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person surrogacy or surrogacy procedures at a place other than a place registered under this Act;

(v) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall promote, publish, canvass, propagate or advertise or cause to be promoted, published, canvassed, propagated or advertised which—

(a) is aimed at inducing or is likely to induce a woman to act as a surrogate mother;

(b) is aimed at promoting a surrogacy clinic for commercial surrogacy or promoting commercial surrogacy in general;

(c) seeks or aimed at seeking a woman to act as a surrogate mother;

(d) states or implies that a woman is willing to become a surrogate mother;
or

(e) advertises commercial surrogacy in print or electronic media or in any other form;

(vi) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall conduct or cause abortion during the period of surrogacy without the written consent of the surrogate mother and on authorisation of the same by the appropriate authority concerned:

Provided that the authorisation of the appropriate authority shall be subject to, and in compliance with, the provisions of the Medical Termination of Pregnancy Act, 1971;

34 of 1971.

(vii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall store a human embryo or gamete for the purpose of surrogacy:

Provided that nothing contained in this clause shall affect such storage for other legal purposes like sperm banks, IVF and medical research for such period and in such manner as may be prescribed;

(viii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall in any form conduct or cause to be conducted sex selection for surrogacy.

CHAPTER III

REGULATION OF SURROGACY AND SURROGACY PROCEDURES

4. On and from the date of commencement of this Act,—

(i) no place including a surrogacy clinic shall be used or cause to be used by any person for conducting surrogacy or surrogacy procedures, except for the purposes specified in clause (ii) and after satisfying all the conditions specified in clauses (iii);

(ii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or availed of, except for the following purposes, namely:—

(a) when either or both members of the couple is suffering from proven infertility;

(b) when it is only for altruistic surrogacy purposes;

(c) when it is not for commercial purposes or for commercialisation of surrogacy or surrogacy procedures;

(d) when it is not for producing children for sale, prostitution or any other form of exploitation; and

(e) any other condition or disease as may be specified by regulations made by the Board;

(iii) no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or initiated, unless the Director or in-charge of the surrogacy clinic and the person qualified to do so are satisfied, for reasons to be recorded in writing, that the following conditions have been fulfilled, namely:—

(a) the intending couple is in possession of a certificate of essentiality issued by the appropriate authority, after satisfying itself, for the reasons to be recorded in writing, about the fulfilment of the following conditions, namely:—

(I) a certificate of proven infertility in favour of either or both members of the intending couple from a District Medical Board;

Explanation.—For the purposes of this sub-clause, the expression “District Medical Board” means a medical board under the Chairpersonship of Chief Medical Officer or Chief Civil Surgeon or Joint Director of Health Services of the district and comprising of at least two other specialists, namely, the chief gynaecologist or obstetrician and chief pediatrician of the district;

(II) an order concerning the parentage and custody of the child to be born through surrogacy, has been passed by a court of the Magistrate of the first class or above, on an application made by the intending couple and the surrogate mother; and

(III) an insurance coverage of such amount as may be prescribed in favour of the surrogate mother for a period of sixteen months covering postpartum delivery complications from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999;

(b) the surrogate mother is in possession of an eligibility certificate issued by the appropriate authority on fulfilment of the following conditions, namely:—

(I) no woman, other than an ever married woman having a child of her own and between the age of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise;

(II) no person, other than a close relative of the intending couple, shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act;

(III) no woman shall act as a surrogate mother by providing her own gametes;

(IV) no woman shall act as a surrogate mother more than once in her lifetime;

Provided that the number of attempts for surrogacy procedures on the surrogate mother shall be such as may be prescribed; and

(V) a certificate of medical and psychological fitness for surrogacy and surrogacy procedures from a registered medical practitioner;

(c) an eligibility certificate for intending couple is issued separately by the appropriate authority on fulfilment of the following conditions, namely:—

(I) the age of the intending couple is between 23 to 50 years in case of female and between 26 to 55 years in case of male on the day of certification;

(II) the intending couple are married for at least five years and are Indian citizens;

(III) the intending couple have not had any surviving child biologically or through adoption or through surrogacy earlier:

Provided that nothing contained in this item shall affect the intending couple who have a child and who is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure and approved by the appropriate authority with due medical certificate from a District Medical Board; and

(IV) such other conditions as may be specified by the regulations.

Prohibition of conducting surrogacy.

5. No person including a relative or husband of a surrogate mother or intending couple shall seek or encourage to conduct any surrogacy or surrogacy procedures on her except for the purpose specified in clause (ii) of section 4.

Written informed consent of surrogate mother.

6. (I) No person shall seek or conduct surrogacy procedures unless he has—

(i) explained all known side effects and after effects of such procedures to the surrogate mother concerned; and

(ii) obtained in the prescribed form, the written informed consent of the surrogate mother to undergo such procedures in the language she understands.

(2) Notwithstanding anything contained in sub-section (I), the surrogate mother shall have an option to withdraw her consent for surrogacy before the implantation of human embryo in her womb.

Prohibition to abandon child born through surrogacy.

7. The intending couple shall not abandon the child, born out of a surrogacy procedure, whether within India or outside, for any reason whatsoever, including but not restricted to, any genetic defect, birth defect, any other medical condition, the defects developing subsequently, sex of the child or conception of more than one baby and the like:

Provided that any child born out of surrogacy procedure, shall be deemed to be a biological child of the intending couple and the said child shall be entitled to all the rights and privileges available to a natural child under any law for time being in force.

Number of oocytes or human embryos to be implanted.

8. The number of oocytes or human embryos to be implanted in the surrogate mother for the purpose of surrogacy, shall be such as may be prescribed.

Prohibition of abortion.

9. No person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall force the surrogate mother to abort at any stage of surrogacy except in such conditions as may be prescribed.

CHAPTER IV

REGISTRATION OF SURROGACY CLINICS

Registration of surrogacy clinics.

10. (I) No person shall establish any surrogacy clinic for undertaking surrogacy or to render surrogacy procedures in any form unless such clinic is duly registered under this Act.

(2) Every application for registration under sub-section (I) shall be made to the appropriate authority in such form, manner and shall be accompanied by such fees as may be prescribed.

(3) Every surrogacy clinic which is conducting surrogacy or surrogacy procedures, partly or exclusively, for the purposes referred to in clause (ii) of section 4 shall, within a period of sixty days from the date of appointment of appropriate authority, apply for registration:

Provided that such clinic shall cease to conduct any such counseling or procedures on the expiry of six months from the date of commencement of this Act, unless such clinic has applied for registration and is so registered separately or till such application is disposed of, whichever is earlier.

(4) No surrogacy clinic shall be registered under this Act, unless the appropriate authority is satisfied that such clinic is in a position to provide such facilities and maintain such equipments and standards including specialised manpower, physical infrastructure and diagnostic facilities as may be prescribed.

11. (1) The appropriate authority shall after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules and regulations made thereunder, grant a certificate of registration to the surrogacy clinic, within a period of ninety days from the date of application received by it, in such form, on payment of such fees and in such manner, as may be prescribed.

Certificate of registration.

(2) Where, after the inquiry and after giving an opportunity of being heard to the applicant, the appropriate authority is satisfied that the applicant has not complied with the requirements of this Act or the rules or regulations made thereunder, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be valid for a period of three years and shall be renewed in such manner and on payment of such fees as may be prescribed.

(4) The certificate of registration shall be displayed by the surrogacy clinic at a conspicuous place.

12. (1) The appropriate authority may, *suo motu* or on receipt of a complaint, issue a notice to the surrogacy clinic to show cause as to why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

Cancellation or suspension of registration.

(2) If after giving a reasonable opportunity of being heard to the surrogacy clinic, the appropriate authority is satisfied that there has been a breach of any of the provisions of the Act or the rules or regulations made thereunder, it may, without prejudice to any criminal action that it may take against such clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the appropriate authority is of the opinion that it is necessary or expedient to do so in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any surrogacy clinic without issuing any notice under sub-section (1).

13. The surrogacy clinic may, within a period of thirty days from the date of receipt of the communication relating to order of rejection of application, suspension or cancellation of registration passed by the appropriate authority under section 12, prefer an appeal against such order to—

Appeal.

(a) the State Government, where the appeal is against the order of the appropriate authority of a State;

(b) to the Central Government, where the appeal is against the order of the appropriate authority of a Union territory,

in such manner as may be prescribed.

CHAPTER V

NATIONAL AND STATE SURROGACY BOARDS

Constitution
of National
Surrogacy
Board.

14. (1) The Central Government shall, by notification, constitute a Board to be known as the National Surrogacy Board to exercise the powers and perform the functions conferred on the Board under this Act.

(2) The Board shall consist of—

(a) the Minister in-charge of the Ministry of Health and Family Welfare, the Chairperson, *ex officio*;

(b) the Secretary to the Government of India in-charge of the Department dealing with the surrogacy matter, Vice-Chairperson, *ex officio*;

(c) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members, *ex officio*;

(d) three Members of the Ministries of Central Government in-charge of Women and Child Development, Legislative Department in the Ministry of Law and Justice and the Ministry of Home Affairs, not below the rank of Joint Secretary, Members, *ex officio*;

(e) the Director General of Health Services of the Central Government, Member, *ex officio*;

(f) ten expert Members to be appointed by the Central Government in such manner as may be prescribed and two each from amongst—

(i) eminent medical geneticists or embryologists;

(ii) eminent gynaecologists and obstetricians or experts of stri-roga or prasuti-tantra;

(iii) eminent social scientists;

(iv) representatives of women welfare organisations; and

(v) representatives from civil society working on women's health and child issues,

possessing such qualifications and experience as may be prescribed;

(g) four Chairpersons of the State Boards to be nominated by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order, Member, *ex officio*; and

(h) an officer, not below the rank of a Joint Secretary to the Central Government, in-charge of Surrogacy Division in the Ministry of Health and Family Welfare, who shall be the Member-Secretary, *ex officio*.

15. (1) The term of office of a Member, other than an *ex officio* Member, shall be—

(a) in case of nomination under clause (c) of sub-section (2) of section 14, three years:

Provided that the term of such Member shall come to an end as soon as the Member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or ceases to be a Member of the House from which she was elected; and

(b) in case of appointment under clause (f) of sub-section (2) of section 14, one year:

Provided that the person to be appointed as Member under this clause shall be of such age as may be prescribed.

Term of
office of
Members.

(2) Any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled by the Central Government by making a fresh appointment within a period of one month from the date on which such vacancy occurs and the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(3) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

16. (1) The Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be determined by the regulations:

Meetings of Board.

Provided that the Board shall meet at least once in six months.

(2) The Chairperson shall preside at the meeting of the Board and if for any reason the Chairperson is unable to attend the meeting of the Board, the Vice-Chairperson shall preside at the meetings of the Board.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice-Chairperson shall have a second or casting vote.

(4) The Members, other than *ex officio* Members, shall receive only compensatory travelling expenses for attending the meetings of the Board.

17. No act or proceeding of the Board shall be invalid merely by reason of—

Vacancies, etc., not to invalidate proceedings of Board.

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a Member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

18. (1) A person shall be disqualified for being appointed and continued as a Member if, he—

Disqualifications for appointment as Member.

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or

(f) is a practicing member or an office-bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his function as a Member; or

(g) is an office bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility.

(2) The Members referred to in clause (f) of section 14 shall not be removed from their office except by an order of the Central Government on the ground of their proved misbehaviour or incapacity after the Central Government has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the Central Government, come to the conclusion that the Member ought on any such ground to be removed.

(3) The Central Government may suspend any Member against whom an inquiry under sub-section (2) is being initiated or pending until the Central Government has passed an order on receipt of the report of the inquiry.

Temporary association of persons with Board for particular purposes.

19. (1) The Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with the Board under sub-section (1) shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote in a meeting of the Board and shall not be a Member for any other purpose.

Authentication of orders and other instruments of Board.

20. All orders and decisions of the Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary of the Board.

Eligibility of Member for re-appointment.

21. Subject to other terms and conditions of service as may be prescribed, any person ceasing to be a Member shall be eligible for re-appointment as such Member:

Provided that no Member other than an *ex officio* Member shall be appointed for more than two consecutive terms.

Functions of Board.

22. The Board shall discharge the following functions, namely:—

(a) to advise the Central Government on policy matters relating to surrogacy;

(b) to review and monitor the implementation of the Act, and the rules and regulations made thereunder and recommend to the Central Government, changes therein;

(c) to lay down the code of conduct to be observed by persons working at surrogacy clinics;

(d) to set the minimum standards of physical infrastructure, laboratory and diagnostic equipment and expert manpower to be employed by the surrogacy clinics;

(e) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure their effective performance;

(f) to supervise the functioning of State Surrogacy Boards; and

(g) such other functions as may be prescribed.

Constitution of State Surrogacy Board.

23. (1) Each State and Union territory having Legislature shall constitute a Board to be known as the State Surrogacy Board or the Union territory Surrogacy Board, as the case may be, which shall discharge the following functions, namely:—

(i) to review the activities of the appropriate authorities functioning in the State or Union territory and recommend appropriate action against them;

(ii) to monitor the implementation of the provisions of the Act, and the rules and regulations made thereunder and make suitable recommendations relating thereto, to the Board;

(iii) to send such consolidated reports as may be prescribed, in respect of the various activities undertaken in the State under the Act, to the Board and the Central Government; and

(iv) such other functions as may be prescribed.

Composition of State Board.

24. The State Board shall consist of—

(a) the Minister in-charge of Health and Family Welfare in the State, Chairperson, *ex officio*;

(b) the Secretary in-charge of the Department of Health and Family Welfare, Vice-Chairperson, *ex officio*;

(c) Secretaries or Commissioners in-charge of the Departments of Women and Child Development, Social Welfare, Law and Justice and Home Affairs or their nominees, members, *ex officio*;

(d) Director-General of Health and Family Welfare of the State Government, member, *ex officio*;

(e) three women members of the State Legislative Assembly or Union territory Legislative Council, members, *ex officio*;

(f) ten expert members to be appointed by the State Government in such manner as may be prescribed, two each from amongst—

(i) eminent medical geneticists or embryologists;

(ii) eminent gynaecologists and obstetricians or experts of stri-roga or prasuti-tantra;

(iii) eminent social scientists;

(iv) representatives of women welfare organisations; and

(v) representatives from civil society working on women's health and child issues,

possessing such qualifications and experiences as may be prescribed;

(g) an officer not below the rank of Joint Secretary to the State Government in-charge of Family Welfare, who shall be the Member-Secretary, *ex officio*.

25. (1) The term of office of a member, other than an *ex officio* member, shall be—

Term of
office of
members.

(a) in case of nomination under clause (e) of section 24, three years:

Provided that the term of such member shall come to an end as soon as the member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the Legislative Assembly, or the Deputy Chairman of the Legislative Council or ceases to be a member of the House from which she was elected; and

(b) in case of appointment under clause (f) of section 24, one year:

Provided that the person to be appointed as member under this clause shall be of such age, as may be prescribed.

(2) Any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled within a period of one month from the date on which such vacancy occurs by the State Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(3) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

26. (1) The State Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be specified by the regulations:

Meetings of
State Board.

Provided that the State Board shall meet at least once in four months.

(2) The Chairperson shall preside at the meetings of the Board and if for any reason the Chairman is unable to attend the meeting of the State Board, the Vice-Chairperson shall preside at the meetings of the State Board.

(3) All questions which come up before any meeting of the State Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice-Chairperson shall have a second or casting vote.

(4) The members, other than *ex officio* members, shall receive only compensatory travelling expenses for attending the meetings of the State Board.

Vacancies,
etc., not to
invalidate
proceedings
of State
Board.

27. No act or proceeding of the State Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the State Board; or

(b) any defect in the appointment of a person acting as a member of the State Board; or

(c) any irregularity in the procedure of the State Board not affecting the merits of the case.

Disqualifications
for
appointment
as member.

28. (1) A person shall be disqualified for being appointed and continued as a member if, he—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, which in the opinion of the State Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or

(f) is a practicing member or an office bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his functions as a member; or

(g) is an office bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility.

(2) The members referred to in clause (f) of section 24 shall not be removed from their office except by an order of the State Government on the ground of their proved misbehaviour or incapacity after the State Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the State Government, come to the conclusion that the member ought on any such ground to be removed.

(3) The State Government may suspend any member against whom an inquiry under sub-section (2) is being initiated or pending until the State Government has passed an order on receipt of the report of the inquiry.

Temporary
association of
persons with
State Board
for particular
purposes.

29. (1) The State Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with it by the State Board under sub-section (1) shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the State Board and shall not be a member for any other purpose.

Authentication
of orders and
other
instruments
of State
Board.

30. All orders and decisions of the State Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the State Board shall be authenticated by the signature of the Member-Secretary of the State Board.

31. Subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for re-appointment as such member:

Eligibility of member for re-appointment.

Provided that no member other than an *ex officio* member shall be appointed for more than two consecutive terms.

CHAPTER VI

APPROPRIATE AUTHORITY

32. (1) The Central Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for each of the Union territories for the purposes of this Act.

Appointment of appropriate authority.

(2) The State Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for the whole or any part of the State for the purposes of this Act.

(3) The appropriate authority, under sub-section (1) or sub-section (2), shall,—

(a) when appointed for the whole of the State or the Union territory, consist of—

(i) an officer of or above the rank of the Joint Director of Health and Family Welfare Department—Chairperson;

(ii) an eminent woman representing women's organisation— member;

(iii) an officer of Law Department of the State or the Union territory concerned not below the rank of a Deputy Secretary—member; and

(iv) an eminent registered medical practitioner—member:

Provided that any vacancy occurring therein shall be filled within one month of the occurrence of such vacancy;

(b) when appointed for any part of the State or the Union territory, be officers of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

33. The appropriate authority shall discharge the following functions, namely:—

Functions of appropriate authority.

(a) to grant, suspend or cancel registration of a surrogacy clinic;

(b) to enforce the standards to be fulfilled by the surrogacy clinics;

(c) to investigate complaints of breach of the provisions of this Act, rules and regulations made thereunder and take legal action as per provisions of this Act;

(d) to take appropriate legal action against the use of surrogacy by any person at any place other than prescribed, *suo motu* or brought to its notice, and also to initiate independent investigations in such matter;

(e) to supervise the implementation of the provisions of this Act and rules and regulations made thereunder;

(f) to recommend to the Board and State Boards about the modifications required in the rules and regulations in accordance with changes in technology or social conditions;

(g) to take action after investigation of complaints received by it against the surrogacy clinics; and

(h) to consider and grant or reject any application under clause (vi) of section 3 and sub-clauses (a) to (c) of clause (iii) of section 4 within a period of ninety days.

Powers of appropriate authorities.

34. (1) The appropriate authority shall exercise the powers in respect of the following matters, namely:—

- (a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act and rules and regulations made thereunder;
- (b) production of any document or material object relating to clause (a);
- (c) search any place suspected to be violating the provisions of this Act and the rules and regulations made thereunder; and
- (d) such other powers as may be prescribed.

(2) The appropriate authority shall maintain the details of registration of surrogacy clinics, cancellation of registration, renewal of registration, grant of certificates to the intending couple and surrogate mothers or any other matter pertaining to grant of license, etc., of the surrogacy clinics in such format as may be prescribed.

CHAPTER VII

OFFENCES AND PENALTIES

Prohibition of commercial surrogacy, exploitation of surrogate mothers and children born through surrogacy.

35. (1) No person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall—

- (a) undertake or provide commercial surrogacy or its related component procedures or services in any form or run a racket or an organised group to empanel or select surrogate mothers or use individual brokers or intermediaries to arrange for surrogate mothers and for surrogacy procedures, at such clinics, laboratories or at any other place;
- (b) issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated, any advertisement in any manner regarding commercial surrogacy by any means whatsoever, scientific or otherwise;
- (c) abandon, disown or exploit or cause to be abandoned, disowned or exploited in any form, the child or children born through surrogacy;
- (d) exploit or cause to be exploited the surrogate mother or the child born through surrogacy in any manner whatsoever;
- (e) sell human embryo or gametes for the purpose of surrogacy and run an agency, a racket or an organisation for selling, purchasing or trading in human embryos or gametes for the purpose of surrogacy;
- (f) import or shall help in getting imported in whatsoever manner, the human embryo or human gametes for surrogacy or for surrogacy procedures; and
- (g) conduct sex selection in any form for surrogacy.

(2) Notwithstanding anything contained in the Indian Penal Code, contraventions of the provisions of clauses (a) to (g) of sub-section (1) by any person shall be an offence punishable with imprisonment for a term which may extend to ten years and with fine which may extend to ten lakh rupees.

45 of 1860.

(3) For the purposes of this section, the expression “advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media, in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal light, sound, smoke or gas.

Punishment for contravention of provisions of Act.

36. (1) Any registered medical practitioner, gynaecologists, pediatrician, embryologists or any person who owns a surrogacy clinic or employed with such a clinic, centre or laboratory and renders his professional or technical services to or at such clinic, centre or laboratory, whether on an honorary basis or otherwise, and who contravenes any of the

provisions of this Act (other than the provisions referred to in section 35) and rules and regulations made thereunder shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten lakh rupees.

(2) In case of subsequent or continuation of the offence referred to in sub-section (1), the name of the registered medical practitioner shall be reported by the appropriate authority to the State Medical Council concerned for taking necessary action including suspension of registration for a period of five years.

37. Any intending couple or any person who seeks the aid of any surrogacy clinic, laboratory or of a registered medical practitioner, gynaecologist, pediatrician, embryologist or any other person for commercial surrogacy or for conducting surrogacy procedures for commercial purposes shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees for the first offence and for any subsequent offence with imprisonment which may extend to ten years and with fine which may extend to ten lakh rupees.

Punishment for initiation of commercial surrogacy.

38. Whoever contravenes any of the provisions of this Act or the rules or the regulations made thereunder for which no penalty has been provided in this Act, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees and in the case of continuing contravention with an additional fine which may extend to ten thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

Penalty for contravention of provisions of Act or rules for which no specific punishment is provided.

1 of 1872.

39. Notwithstanding anything contained in the Indian Evidence Act, 1872, the court shall presume, unless the contrary is proved, that the woman or surrogate mother was compelled by her husband, the intending couple or any other relative, as the case may be, to render surrogacy services, procedures or to donate gametes for the purpose other than those specified in clause (ii) of section 4 and such person shall be liable for abetment of such offence under section 37 and shall be punishable for the offence specified under that section.

Presumption in the case of surrogacy.

2 of 1974.

40. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Offence to be cognizable, non-bailable and non-compoundable.

41. (1) No court shall take cognizance of any offence punishable under this Act except on a complaint in writing made by—

Cognizance of offences.

(a) the appropriate authority concerned, or any officer or an agency authorised in this behalf by the Central Government or the State Government, as the case may be, or the appropriate authority; or

(b) a person including a social organisation who has given notice of not less than fifteen days in the manner prescribed, to the appropriate authority, of the alleged offence and of his intention to make a complaint to the court.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

2 of 1974.

42. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, Chapter XXI A of the said Code relating to plea bargaining shall not apply to the offences under this Act.

Certain provisions of Code of Criminal Procedure, 1973 not to apply.

CHAPTER VIII

MISCELLANEOUS

Maintenance
of records.

43. (1) The surrogacy clinic shall maintain all records, charts, forms, reports, consent letters, agreements and all the documents under this Act and they shall be preserved for a period of twenty-five years or such period as may be prescribed:

Provided that, if any criminal or other proceedings are instituted against any surrogacy clinic, the records and all other documents of such clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other person authorised by the appropriate authority in this behalf.

Power to
search and
seize records,
etc.

44. (1) If the appropriate authority has reason to believe that an offence under this Act has been or is being committed at any surrogacy clinic or any other place, such authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officers considers necessary, such surrogacy clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall apply, as far as may be, to all action taken by the appropriate authority or any officer authorised by it under this Act. 2 of 1974.

Protection of
action taken
in good faith.

45. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or the State Government or the appropriate authority or any officer authorised by the Central Government or the State Government or by the appropriate authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

Application
of other laws
not barred.

46. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power to
make rules.

47. (1) The Central Government may, by notification and subject to the condition of pre-publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the minimum qualifications for persons employed at a registered surrogacy clinic under clause (iii) of section 3;

(b) the manner in which a person shall store human embryo or gamete under clause (vii) of section 3;

(c) the insurance coverage in favour of the surrogate mother from an insurance company under item (III) of sub-clause (a) of clause (iii) of section 4;

(d) the number of attempts of surrogacy or providing of gametes under the proviso to item (III) of sub-clause (b) of clause (iii) of section 4;

(e) the form in which consent of a surrogate mother has to be obtained under clause (ii) of section 6;

(f) the number of oocytes or embryos to be implanted in the surrogate mother under section 8;

(g) the conditions under which the surrogate mother may be allowed for abortion during the process of surrogacy under section 9;

- (h) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 10;
- (i) the facilities to be provided, equipment and other standards to be maintained by the surrogacy clinics under sub-section (4) of section 10;
- (j) the period, manner and form in which a certificate of registration shall be issued under sub-section (1) of section 11;
- (k) the manner in which the certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 11;
- (l) the manner in which an appeal may be preferred under section 13;
- (m) the qualifications and experiences of the Members as admissible under clause (f) of sub-section (2) of section 14;
- (n) the procedures for conducting an inquiry against the Members under sub-section (2) of section 18;
- (o) the conditions under which a Member of the Board eligible for re-appointment under section 21;
- (p) the other functions of the Board under clause (g) of section 22;
- (q) the manner in which reports shall be furnished by the State and Union territory Boards to the Board and the Central Government under clause (iii) of section 23;
- (r) the other functions of the State Board under clause (iv) of section 23;
- (s) the qualifications and experiences of the members as admissible under clause (f) of section 24;
- (t) the age of the person to be appointed as a member, referred to in clause (f) of section 24, under the proviso to clause (b) of sub-section (1) of section 25;
- (u) the procedures for conducting an inquiry against the members under sub-section (2) of section 28;
- (v) the conditions under which the members of State Board eligible for re-appointment under section 31;
- (w) empowering the appropriate authority in any other matter under clause (d) of section 33;
- (x) the other powers of appropriate authority under clause (d) of sub-section (1) of section 34;
- (y) the particulars of the details of registration of surrogacy clinics, cancellation of registration, etc., in such format under sub-section (2) of section 34;
- (z) the manner of giving notice by a person under clause (b) of sub-section (1) of section 41;
- (za) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 43;
- (zb) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered under sub-section (1) of section 44; and
- (zc) any other matter which is to be, or may be, or in respect of which provision is to be made by rules.

Power to
make
regulations.

48. The Board may, with the prior approval of the Central Government, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for—

(a) the fulfilment of any other condition under which eligibility certificate to be issued by the appropriate authority under item IV of sub-clause (d) of clause (2) of section 4;

(b) the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of Members which shall form the quorum under sub-section (1) of section 16;

(c) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 19;

(d) the time and place of the meetings of the State Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 26;

(e) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 29; and

(f) any other matter which is required to be, or may be, specified by regulations.

Rules and
regulations to
be laid before
Parliament.

49. Every rule made by the Central Government and every regulation made by the Board under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

Transitional
provision.

50. Subject to the provisions of this Act, there shall be provided a gestation period of ten months from the date of coming into force of this Act to existing surrogate mothers' to protect their well being.

Power to
remove
difficulties.

51. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the said Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

India has emerged as a surrogacy hub for couples from different countries for past few years. There have been reported incidents of unethical practices, exploitation of surrogate mothers, abandonment of children born out of surrogacy and import of human embryos and gametes. Widespread condemnation of commercial surrogacy in India has been regularly reflected in different print and electronic media for last few years. The Law Commission of India has, in its 228th Report, also recommended for prohibition of commercial surrogacy by enacting a suitable legislation. Due to lack of legislation to regulate surrogacy, the practice of surrogacy has been misused by the surrogacy clinics, which leads to rampant of commercial surrogacy and unethical practices in the said area of surrogacy.

2. In the light of above, it had become necessary to enact a legislation to regulate surrogacy services in the country, to prohibit the potential exploitation of surrogate mothers and to protect the rights of children born through surrogacy.

3. The Surrogacy (Regulation) Bill, 2019, *inter alia*, provides for the following, namely:—

(a) to constitute the Surrogacy Boards at National and State level;

(b) to allow ethical altruistic surrogacy to the intending infertile Indian married couple between the age of 23-50 years and 26-55 years for female and male respectively;

(c) the intending couples should be legally married for at least five years and should be Indian citizens to undertake surrogacy or surrogacy procedures;

(d) to provide that the intending couples shall not abandon the child, born out of a surrogacy procedure, under any condition and the child born out of surrogacy procedure shall have the same rights and privileges as are available to the biological child;

(e) the surrogate mother should be a close relative of the intending couple and should be an ever married woman having a child of her own and between the age of 25-35 years;

(f) to provide that the surrogate mother shall be allowed to act as surrogate mother only once;

(g) to constitute the Surrogacy Board at National level which shall exercise and perform functions conferred on it under the Act. It is also proposed to constitute Surrogacy Boards at the State and Union territory level to perform similar functions in respective States and Union territories;

(h) to appoint one or more appropriate authorities at State and Union territory level which shall be the executive bodies for implementing the provisions of the Act;

(i) to provide that the surrogacy clinics shall be registered only after the appropriate authority is satisfied that such clinics are in a position to provide facilities and can maintain equipments and standards including specialised manpower, physical infrastructure and diagnostic facilities as may be provided in the rules and regulations;

(j) to provide that no person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall undertake commercial surrogacy, issue advertisements regarding commercial surrogacy, abandon the child born through surrogacy, exploit the surrogate mother, sell human embryo or import human embryo for the purpose of surrogacy and contravention of the said provisions shall be an offence punishable with imprisonment for a term which shall not be less than ten years and with fine which may extend to ten lakh rupees.

4. The Notes on Clauses explain in detail the various provisions contained in the Surrogacy (Regulation) Bill, 2019.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 5th July, 2019.

DR. HARSH VARDHAN

Notes on clauses

Clause 1.—This clause relates to Short title, Extent and Commencement of the proposed legislation.

Clause 2.—This clause contains the definitions of various expressions used in the proposed legislation.

Clause 3.—This clause relates to prohibition and regulation of surrogacy clinics.

Sub-clause (i) of this clause provides that no surrogacy clinic, unless registered under this Act, shall conduct or associate with, or help in any manner, in conducting activities relating to surrogacy and surrogacy procedures.

Sub-clause (ii) of this clause provides that no surrogacy clinic, paediatrician, gynaecologist, embryologist, registered medical practitioner or any person shall conduct, offer, undertake, promote or associate with or avail of commercial surrogacy in any form.

Sub-clause (iii) of this clause provides that no surrogacy clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess such qualifications as may be prescribed.

Sub-clause (iv) of this clause provides that no registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person surrogacy or surrogacy procedures at a place other than a place registered under this Act.

Sub-clause (v) of this clause provides that no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall promote, publish, canvass, propagate or advertise or cause to be promoted, published, canvassed, propagated or advertised which—

(a) is aimed at inducing or is likely to induce a woman to act as a surrogate mother;

(b) is aimed at promoting a surrogacy clinic for commercial surrogacy or promoting commercial surrogacy in general;

(c) seeks or aimed at seeking a woman to act as a surrogate mother;

(d) states or implies that a woman is willing to become a surrogate mother; or

(e) advertises commercial surrogacy in print or electronic media or in any other form.

Sub-clause (vi) of this clause provides that no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall conduct or cause abortion during the period of surrogacy without the written consent of the surrogate mother and on authorisation of the same by the appropriate authority concerned. However, that the authorisation of the appropriate authority shall be subject to, and in compliance with, the provisions of the Medical Termination of Pregnancy Act, 1971.

Sub-clause (vii) of this clause provides that no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall store a human embryo or gamete for the purpose of surrogacy. However, that nothing contained in this sub-clause shall affect such storage for other legal purposes like sperm banks, IVF and medical research for such period and in such manner as may be prescribed.

Sub-clause (viii) of this clause provides that no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall be involved in any form of sex selection for surrogacy.

Clause 4.—This clause relates to regulation of surrogacy and surrogacy procedures.

Sub-clause (i) of this clause provides that no place including a surrogacy clinic shall be used or caused to be used by any person for conducting surrogacy or surrogacy procedures, except for the purposes specified in sub-clause (ii) and after satisfying all the conditions specified in sub-clause (iii).

Sub-clause (ii) of this clause provides that no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or availed of, except for the following purposes, namely:—(a) when either or both members of the couple is suffering from proven infertility; (b) when it is only for altruistic surrogacy purposes; (c) when it is not for commercial purposes or for commercialisation of surrogacy or surrogacy procedures; (d) when it is not for producing children for sale, prostitution or any other form of exploitation; and (e) any other condition or disease as may be specified by regulations made by the Board.

Sub-clause (iii) of this clause provides that no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or initiated, unless the Director or in-charge of the surrogacy clinic and the person qualified to do so are satisfied, for reasons to be recorded in writing, that the following conditions have been fulfilled, namely:—

(a) the intending couple is in possession of a certificate of essentiality issued by the appropriate authority, after satisfying for itself, for the reasons to be recorded in writing, about the fulfilment of the following conditions, namely:—

(I) a certificate of proven infertility in favour of either or both members of the intending couple from a District Medical Board;

(II) an order concerning the parentage and custody of the child to be born through surrogacy, have been passed by a court of the Magistrate of the first class or above, on an application made by the intending couple and surrogate mother;

(III) an insurance coverage of such amount as may be prescribed in favour of the surrogate mother for a period of sixteen months covering postpartum delivery complications from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999;

(b) the surrogate mother is in possession of an eligibility certificate issued by the appropriate authority on fulfilment of the following conditions, namely:—

(I) no woman, other than an ever married woman having a child of her own and between the age of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise;

(II) no person, other than a close relative of the intending couple, shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act;

(III) no women shall act as a surrogate mother or help in surrogacy in any way, by providing gametes or by carrying the pregnancy, more than once in her lifetime. However, that the number of attempts for surrogacy procedures on the surrogate mother shall be such as may be prescribed;

(IV) a certificate of medical and psychological fitness for surrogacy and surrogacy procedures from a registered medical practitioner;

(c) an eligibility certificate for intending couple is issued separately by the appropriate authority on fulfilment of the following conditions, namely:—

(I) the age of the intending couple is between 23 to 50 years in case of female and between 26 to 55 years in case of male on the day of certification;

(II) the intending couple are married for at least five years and are Indian citizens;

(III) the intending couple have not had any surviving child biologically or through adoption or through surrogacy earlier. However, that nothing contained in this item shall affect the intending couple who have a child and who is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure and approved by the appropriate authority with due medical certificate from a District Medical Board; and

(IV) such other conditions as may be specified by the regulations.

Clause 5.—This clause relates to prohibition of conducting surrogacy.

This clause provides that no person including a relative or husband of a surrogate mother or intending couple shall seek or encourage to conduct any surrogacy or surrogacy procedures on her except for the purpose specified in sub-clause (ii) of clause 4.

Clause 6.—This clause relates to written informed consent of surrogate mother.

Sub-clause (1) this clause provides that no person shall seek or conduct surrogacy procedures unless he has—(i) explained all known side effects and after effects of such procedures to the surrogate mother concerned; (ii) obtained in the prescribed form, the written informed consent of the surrogate mother to undergo such procedures in the language she understands.

Sub-clause (2) of this clause provides that notwithstanding anything contained in Sub-clause (1) of clause 6, the surrogate mother shall have an option to withdraw from the practice of surrogacy before the implantation of human embryo in her womb.

Clause 7.—This clause relates to prohibition to abandon child born through surrogacy.

This clause provides that the intending couple shall not abandon the child, born out of a surrogacy procedure, whether within India or outside, for any reason whatsoever, including but not restricted to, any genetic defect, birth defect, any other medical condition, the defects developing subsequently, sex of the child or conception of more than one baby and the like. However, that any child born out of surrogacy procedure, shall be deemed to be a biological child of the intending couple and the said child shall be entitled to all the rights and privileges available to a natural child under any law for time being in force.

Clause 8.—This clause relates to number of oocytes or human embryos to be implanted.

This clause provides that the number of oocytes or human embryos to be implanted in the surrogate mother for the purpose of surrogacy, shall be such as may be prescribed.

Clause 9.—This clause relates to prohibition of abortion.

This clause provides that no person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall force the surrogate mother to abort at any stage of surrogacy except in such conditions as may be prescribed.

Clause 10.—This clause relates to registration of surrogacy clinics.

Sub-clause (1) of this clause provides that no person shall establish any surrogacy clinic for undertaking surrogacy or to render surrogacy procedures in any form unless such clinic is duly registered under this Act.

Sub-clause (2) of this clause provides that every application for registration under sub-clause (1) shall be made to the appropriate authority in such form, manner and shall be accompanied by such fees as may be prescribed.

Sub-clause (3) of this clause provides that every surrogacy clinic which is conducting surrogacy or surrogacy procedures, partly or exclusively, referred to in sub-clause (ii) of clause 4 shall, within a period of sixty days from the date of appointment of appropriate authority, apply for registration. However, that such clinic shall cease to conduct any such counselling or procedures on the expiry of six months from the date of commencement of this

Act, unless such clinic has applied for registration and is so registered separately or till such application is disposed of, whichever is earlier.

Sub-clause (4) of this clause provides that no surrogacy clinic shall be registered under this Act, unless the appropriate authority is satisfied that such clinic is in a position to provide such facilities and maintain such equipment and standards including specialised manpower, physical infrastructure and diagnostic facilities as may be prescribed.

Clause 11.—This clause relates to certificate of registration.

Sub-clause (1) of this clause provides that the appropriate authority shall after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of this Act, rules and regulations made thereunder, grant a certificate of registration to the surrogacy clinic, within a period of ninety days from the date of application received by it, in such form, on payment of such fees and in such manner, as may be prescribed.

Sub-clause (2) of this clause provides that where, after the inquiry and after giving an opportunity of being heard to the applicant, the appropriate authority is satisfied that the applicant has not complied with the requirements of this Act or the rules or regulations made thereunder, it shall, for reasons to be recorded in writing, reject the application for registration.

Sub-clause (3) of this clause provides that every certificate of registration shall be valid for a period of three years and shall be renewed in such manner and on payment of such fees as may be prescribed.

Sub-clause (4) of this clause provides that the certificate of registration shall be displayed by the surrogacy clinic at a conspicuous place.

Clause 12.—This clause relates to cancellation or suspension of registration.

Sub-clause (1) of this clause provides that the appropriate authority may, *suo motu* or on receipt of a complaint, issue a notice to the surrogacy clinic to show cause as to why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

Sub-clause (2) of this clause provides that if after giving a reasonable opportunity of being heard to the surrogacy clinic, the appropriate authority is satisfied that there has been a breach of the provision of the Act or the rules or regulations made thereunder, it may, without prejudice to any criminal action that it may take against such clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

Sub-clause (3) of this clause provides that notwithstanding anything contained in the sub-clauses (1) and (2) of clause 12, if the appropriate authority is of the opinion that it is necessary or expedient to do so in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any surrogacy clinic without issuing any notice under sub-section (1) of clause 12.

Clause 13.—This clause relates to appeal.

This clause provides that the surrogacy clinic may, within a period of thirty days from the date of receipt of the communication relating to order of rejection of application, suspension or cancellation of registration passed by the appropriate authority under clause 12, prefer an appeal against such order to—(a) the State Government, where the appeal is against the order of the appropriate authority of a State; (b) to the Central Government, where the appeal is against the order of the appropriate authority of a Union territory, in such manner as may be prescribed.

Clause 14.—This clause relates to constitution of National Surrogacy Board.

Sub-clause (1) of this clause provides that the Central Government shall, by notification, constitute a Board to be known as the National Surrogacy Board to exercise the powers and perform the functions conferred on the Board under this Act.

Sub-clause (2) of this clause provides that the Board shall consist of—(a) the Minister in-charge of the Ministry of Health and Family Welfare, the Chairperson, *ex officio*; (b) the Secretary to the Government of India in-charge of the Department dealing with the surrogacy matter, Vice-Chairperson, *ex officio*; (c) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members, *ex officio*; (d) three Members of the Ministries of Central Government in-charge of Women and Child Development, Legislative Department in the Ministry of Law and Justice and the Ministry of Home Affairs not below the rank of Joint Secretary, Members, *ex officio*; (e) the Director General of Health Services of the Central Government, Member, *ex officio*; (f) ten expert Members to be appointed by the Central Government in such manner as may be prescribed and two each from amongst—(i) eminent medical geneticists or embryologists; (ii) eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti-tantra*; (iii) eminent social scientists; (iv) representatives of women welfare organisations; and (v) representatives from civil society working on womens' health and child issues, possessing of such qualifications and experience as may be prescribed; (g) four Chairpersons of the State Boards to be nominated by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order, Member, *ex officio*; (h) an officer, not below the rank of a Joint Secretary to the Central Government, in-charge of Surrogacy Division in the Ministry of Health and Family Welfare, who shall be the Member-Secretary, *ex officio*.

Clause 15.—This clause relates to term of office of Members.

Sub-clause (1) of this clause provides that the term of office of a Member, other than an *ex officio* Member, shall be—(a) in case of nomination of three women Members of Parliament, three years. However, that the term of such Member shall come to an end as soon as the Member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or ceases to be a Member of the House from which she was elected; (b) in case of appointment of ten expert Members, one year. However, that the person to be appointed as Member under this clause shall be of such age as may be prescribed.

Sub-clause (2) of this clause provides that any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled by the Central Government by making a fresh appointment within a period of one month from the date on which such vacancy occurs and the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

Sub-clause (3) of this clause provides that the Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

Clause 16.—This clause relates to meetings of Board.

Sub-clause (1) of this clause provides that the Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be determined by the regulations. However, that the Board shall meet at least once in six months.

Sub-clause (2) of this clause provides that the Chairperson shall preside at the meeting of the Board and if for any reason the Chairperson is unable to attend the meeting of the Board, the Vice-Chairperson shall preside at the meetings of the Board.

Sub-clause (3) of this clause provides that all questions which come up before any meeting of the Board shall be decided by a majority of the votes of the Members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice-Chairperson shall have and exercise a second or casting vote.

Sub-clause (4) of this clause provides that the Members, other than *ex officio* Members, shall receive only compensatory travelling expenses for attending the meetings of the Board.

Clause 17.—This clause relates to vacancies, etc., not to invalidate proceedings of Board.

This clause provides that no act or proceeding of the Board shall be invalid merely by reason of—(a) any vacancy in, or any defect in the constitution of, the Board; or (b) any defect in the appointment of a person acting as a Member of the Board; or (c) any irregularity in the procedure of the Board not affecting the merits of the case.

Clause 18.—This clause relates to disqualifications for appointment as Member.

Sub-clause (1) of this clause provides that a person shall be disqualified for being appointed and continued as a Member if, he—(a) has been adjudged as an insolvent; or (b) has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude; or (c) has become physically or mentally incapable of acting as a Member; or (d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a Member; or (e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or (f) is a practising Member or an office bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his function as a Member; or (g) is an office bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility.

Sub-clause (2) of this clause provides that the Members referred to in item (f) of sub-clause (2) of clause 14 shall not be removed from his office except by an order of the Central Government on the ground of his proved misbehaviour or incapacity after the Central Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the Central Government, come to the conclusion that the Member ought on any such ground to be removed.

Sub-clause (3) of this clause provides that the Central Government may suspend any Member in respect of whom an inquiry under sub-clause (2) of clause 18 is being initiated or pending until the Central Government has passed an order on receipt of the report of the inquiry.

Clause 19.—This clause relates to temporary association of persons with Board for particular purposes.

Sub-clause (1) of this clause provides that the Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

Sub-clause (2) of this clause provides that a person associated with the Board under sub-clause (1) of clause 19 shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a Member for any other purpose.

Clause 20.—This clause relates to authentication of orders and other instruments of Board.

This clause provides that all orders and decisions of the Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary of the Board.

Clause 21.—This clause relates to eligibility of Member for re-appointment.

This clause provides that subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a Member shall be eligible for re-appointment as such Member. However, that no Member other than an *ex officio* Member shall be appointed for more than two consecutive terms.

Clause 22.—This clause relates to functions of Board.

This clause provides that the Board shall discharge the following functions, namely:—(a) to advise the Central Government on policy matters relating to surrogacy;

(b) to review and monitor the implementation of the Act, rules and regulations made thereunder and recommend to the Central Government, changes therein; (c) to lay down code of conduct to be observed by persons working at surrogacy clinics; to set the minimum standards of physical infrastructure, laboratory and diagnostic equipment and expert manpower to be employed by the surrogacy clinics; (d) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure their effective performance; (e) to supervise the functioning of the State Surrogacy Boards; and (f) such other functions as may be prescribed.

Clause 23.—This clause relates to Constitution of State Surrogacy Board.

This clause provides that the each State and Union territory having Legislature shall constitute a Board to be known as the State Surrogacy Board or the Union territory Surrogacy Board, as the case may be, which shall discharge the following functions, namely:—(i) to review the activities of the appropriate authorities functioning in the State or Union territory and recommend appropriate action against them; (ii) to monitor the implementation of the provisions of the Act, rules and regulations made thereunder and make suitable recommendations relating thereto, to the Board; (iii) to send such consolidated reports as may be prescribed in respect of the various activities undertaken in the State under the Act to the Board and the Central Government; and (iv) such other functions as may be prescribed.

Clause 24.—This clause relates to composition of the State Board.

This clause provides that the State Board shall consist of—(a) the Minister in-charge of Health and Family Welfare in the State, Chairperson, *ex officio*; (b) the Secretary in-charge of the Department of Health and Family Welfare, Vice-Chairperson, *ex officio*; (c) Secretaries or Commissioners in-charge of the Departments of Women and Child Development, Social Welfare, Law and Justice and Home Affairs or their nominees, Members, *ex officio*; (d) Director General of Health and Family Welfare of the State Government, Member, *ex officio*; (e) three women Members of the State Legislative Assembly or Union territory Legislative Council, Members, *ex officio*; (f) ten expert Members to be appointed by the State Government in such manner as may be prescribed, two each from amongst—(i) eminent medical geneticists or embryologists; (ii) eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti-tantra*; (iii) eminent social scientists; (iv) representatives of women welfare organisations; and (v) representatives from civil society working on women's health and child issues, possessing of such qualifications and experiences as may be prescribed; (g) an officer not below the rank of Joint Secretary to the State Government in-charge of Family Welfare, who shall be the Member-Secretary, *ex officio*.

Clause 25.—This clause relates to term of office of Members.

Sub-clause (1) of this clause provides that the term of office of a Member, other than an *ex officio* Member, shall be—(a) in case of nomination of three women Members of the State Legislative Assembly or Union territory Legislative Council, Members, *ex officio*, three years. However, that the term of such Member shall come to an end as soon as the Member becomes a Minister or Minister of the State or Deputy Minister, or the Speaker or the Deputy Speaker of the Legislative Assembly, or the Deputy Chairman of the Legislative Council or ceases to be a Member of the House from which she was elected; (b) in case of appointment of ten expert Members, one year. However, that the person to be appointed as Member under this clause shall be of such age, as may be prescribed.

Sub-clause (2) of this clause provides that any vacancy occurring in the office whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, shall be filled within a period of one month from the date on which such vacancy occurs by the State Government by making a fresh appointment and the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

Sub-clause (3) of this clause provides that the Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time.

Clause 26.—This clause relates to meetings of State Board.

Sub-clause (1) of this clause provides that the State Board shall meet at such places and times and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be determined by the regulations. However, that the State Board shall meet at least once in four months.

Sub-clause (2) of this clause provides that the Chairperson shall preside at the meeting of the Board and if for any reason the Chairman is unable to attend the meeting of the State Board, the Vice-Chairperson shall preside at the meetings of the State Board.

Sub-clause (3) of this clause provides that the all questions which come up before any meeting of the State Board shall be decided by a majority of the votes of the Members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the Vice-Chairperson shall have and exercise a second or casting vote.

Sub-clause (4) of this clause provides that the Members, other than *ex officio* Members, shall receive only compensatory travelling expenses for attending the meetings of the State Board.

Clause 27.—This clause relates to vacancies, etc., not to invalidate proceedings of State Board.

This clause provides that no act or proceeding of the State Board shall be invalid merely by reason of—(a) any vacancy in, or any defect in the constitution of the State Board; or (b) any defect in the appointment of a person acting as a Member of the State Board; or (c) any irregularity in the procedure of the State Board not affecting the merits of the case.

Clause 28.—This clause relates to disqualifications for appointment as Member.

Sub-clause (1) of this clause provides that a person shall be disqualified for being appointed and continued as a Member if, he—(a) has been adjudged as an insolvent; or (b) has been convicted of an offence, which in the opinion of the State Government, involves moral turpitude; or (c) has become physically or mentally incapable of acting as a Member; or (d) has acquired such financial or other interest, as is likely to affect prejudicially his functions as a Member; or (e) has so abused his position, as to render his continuance in office prejudicial to the public interest; or (f) is a practicing Member or an office bearer of any association representing surrogacy clinics, having financial or other interest likely to affect prejudicially, his function as a Member; or (g) is an office bearer, heading or representing, any of the professional bodies having commercial interest in surrogacy or infertility.

Sub-clause (2) of this clause provides that the Members referred to in sub-clause (f) of clause 24 shall not be removed from their office except by an order of the State Government on the ground of his proved misbehaviour or incapacity after the State Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the State Government, come to the conclusion that the Member ought on any such ground to be removed.

Sub-clause (3) of this clause provides that the State Government may suspend any Member in respect of whom an inquiry under sub-clause (2) of clause 28 is being initiated or pending until the State Government has passed an order on receipt of the report of the inquiry.

Clause 29.—This clause relates to temporary association of persons with State Board for particular purposes.

Sub-clause (1) of this clause provides that the State Board may associate with itself, in such manner and for such purposes as may be determined by the regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

Sub-clause (2) of this clause provides that a person associated with it by the State Board under sub-clause (1) of clause 29 shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the State Board and shall not be a Member for any other purpose.

Clause 30.—This clause relates to authentication of orders and other instruments of State Board.

This clause provides that all orders and decisions of the State Board shall be authenticated by the signature of the Chairperson and all other instruments issued by the State Board shall be authenticated by the signature of the Member-Secretary of the State Board.

Clause 31.—This clause relates to eligibility of Member for re-appointment.

This clause provides that subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for re-appointment as such Member. However, that no Member other than an *ex officio* Member shall be appointed for more than two consecutive terms.

Clause 32.—This clause relates to appointment of appropriate authority.

Sub-clause (1) of this clause provides that the Central Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for each of the Union territories for the purposes of this Act.

Sub-clause (2) of this clause provides that the State Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more appropriate authorities for the whole or part of the State for the purposes of this Act.

Sub-clause (3) of this clause provides that the appropriate authority, under sub-clause (1) or sub-clause (2) of clause 32, shall,—(a) when appointed for the whole of the State or the Union territory, consist of—(i) an officer of or above the rank of the Joint Director of Health and Family Welfare Department—Chairperson; (ii) an eminent woman representing womens' organisation—Member; and (iii) an officer of Law Department of the State or the Union territory concerned not below the rank of a Deputy Secretary—Member; (iv) an eminent registered medical practitioner—Member. However, that any vacancy occurring therein shall be filled within one month of the occurrence of such vacancy; (b) when appointed for any part of the State or the Union territory, be officers of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

Clause 33.—This clause relates to functions of appropriate authority.

This clause provides that the appropriate authority shall discharge the following functions, namely:—(a) to grant, suspend or cancel registration of a surrogacy clinic; (b) to enforce the standards to be fulfilled by the surrogacy clinics; (c) to investigate complaints of breach of the provisions of this Act, rules and regulations made thereunder and take legal action as per provision of this Act; (d) to take appropriate legal action against the use of surrogacy by any person at any place other than prescribed, *suo motu* or brought to its notice, and also to initiate independent investigations in such matter; (e) to supervise the implementation of the provisions of this Act, rules and regulations made thereunder; (f) to recommend to the Board and State Boards about the modifications required in the rules and regulations in accordance with changes in technology or social conditions; (g) to take action after investigation of complaints received by it against the surrogacy clinics; and (h) to consider and grant or reject any application under the provisions of this Act.

Clause 34.—This clause relates to powers of appropriate authorities.

Sub-clause (1) of this clause provides that the appropriate authority shall exercise the powers in respect of the following matters, namely:—(a) summoning of any person who is in

possession of any information relating to violation of the provisions of this Act, rules and regulations made thereunder; (b) production of any document or material object relating to sub-clause (a); (c) search any place suspected to be violating the provisions of this Act, rules and regulations made thereunder; and (d) such other powers as may be prescribed.

Sub-clause (2) of this clause provides that the appropriate authority shall maintain the details of registration of surrogacy clinics, cancellation of registration, renewal of registration, grant of certificates to the intending couple and surrogate mothers or any other matter pertaining to grant of licence, etc., of the surrogacy clinics in such format as may be prescribed.

Clause 35.—This clause relates to prohibition of commercial surrogacy, exploitation of surrogate mothers and children born through surrogacy.

Sub-clause (1) of this clause provides that no person, organisation, surrogacy clinic, laboratory or clinical establishment of any kind shall—(a) undertake commercial surrogacy, provide commercial surrogacy or its related component procedures or services in any form or run a racket or an organised group to empanel or select surrogate mothers or use individual brokers or intermediaries to arrange for surrogate mothers and for surrogacy procedures, at such clinics, laboratories or at any other place; (b) issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding commercial surrogacy by any means whatsoever, scientific or otherwise; (c) abandon or disown or exploit or cause to be abandoned, exploited or disowned in any form the child or children born through surrogacy; (d) exploit or cause to be exploited the surrogate mother or the child born through surrogacy in any manner whatsoever; (e) sell human embryo or gametes for the purpose of surrogacy and run an agency, a racket or an organisation for selling, purchasing or trading in human embryos or gametes for the purpose of surrogacy; (f) import or shall help in getting imported in whatsoever manner, the human embryo or human gametes for surrogacy or for surrogacy procedures.

Sub-clause (2) of this clause provides that the notwithstanding anything contained in the Indian Penal Code, contraventions of the provisions of sub-clause (1) of clause 35 by any person shall be an offence punishable with imprisonment for a term which shall not be less than ten years and with fine which may extend to ten lakh rupees.

Sub-clause (3) of this clause provides that for the purposes of this section, the expression "advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media, in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal light, sound, smoke or gas.

Clause 36.—This clause relates to punishment for contravention of provisions of Act.

Sub-clause (1) of this clause provides that any registered medical practitioner, gynaecologists, paediatrician, embryologists or any person who owns a surrogacy clinic or employed with such a clinic or centre or laboratory and renders his professional or technical services to or at such clinic or centre or laboratory, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act (other than the provisions referred to in clause 35), rules and regulations made thereunder shall be punishable with imprisonment for a term which shall not be less than five years and with fine which may extend to ten lakh rupees.

Sub-clause (2) of this clause provides that in case of subsequent or continuation of the offence referred to in sub-clause (1) of clause 36, the name of the registered medical practitioner shall be reported by the appropriate authority to the State Medical Council concerned for taking necessary action including suspension of registration for a period of five years.

Clause 37.—This clause relates to punishment for initiation of commercial surrogacy.

This clause provides that any intending couple or any person who seeks the aid of any surrogacy clinic, laboratory or of a registered medical practitioner, gynaecologist, paediatrician,

embryologist or any other person for commercial surrogacy or for conducting surrogacy procedures for commercial purposes shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees for the first offence and for any subsequent offence with imprisonment which may extend to ten years and with fine which may extend to ten lakh rupees.

Clause 38.—This clause relates to penalty for contravention of provisions of Act or rules for which no specific punishment is provided.

This clause provides that whoever contravenes any of the provisions of this Act, rules or regulations made thereunder for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees and in the case of continuing contravention with an additional fine which may extend to ten thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

Clause 39.—This clause relates to presumption in the case of surrogacy.

This clause provides that notwithstanding anything contained in the Indian Evidence Act, 1872, the court shall presume, unless the contrary is proved, that the woman or surrogate mother was compelled by her husband, the intending couple or any other relative, as the case may be, to render surrogacy services, procedures or to donate gametes for the purpose other than those specified in sub-clause (ii) of clause 4 and such person shall be liable for abetment of such offence under clause 37 and shall be punishable for the offence specified under that clause.

Clause 40.—This clause relates to offence to be cognizable, non-bailable and non-compoundable.

This clause provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Clause 41.—This clause relates to cognizance of offences.

Sub-clause (1) of this clause provides that no court shall take cognizance of any offence punishable under this Act except on a complaint in writing made by—(a) the appropriate authority concerned, or any officer or an agency authorised in this behalf by the Central Government or the State Government, as the case may be, or the appropriate authority; or (b) a person including a social organisation who has given notice of not less than fifteen days in the manner prescribed, to the appropriate authority, of the alleged offence and of his intention to make a complaint to the court.

Sub-clause (2) of this clause provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Clause 42.—This clause relates to certain provisions of the Code of Criminal Procedure, 1973 not to apply.

This clause provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, Chapter XXIA of the said Code relating to plea of bargaining shall not apply to the offences under this Act.

Clause 43.—This clause relates to maintenance of records.

Sub-clause (1) of this clause provides that the surrogacy clinic shall maintain all records, charts, forms, reports, consent letters, agreements and all the documents under this Act and they shall be preserved for a period of twenty-five years or such period as may be prescribed. However, that, if any criminal or other proceedings are instituted against any surrogacy clinic, the records and all other documents of such clinic shall be preserved till the final disposal of such proceedings.

Sub-clause (2) of this clause provides that all such records shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other person authorised by the appropriate authority in this behalf.

Clause 44.—This clause relates to power to search and seize records, etc.

Sub-clause (1) of this clause provides that if the appropriate authority has reason to believe that an offence under this Act has been or is being committed at any surrogacy clinic or any other place, such authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officers considers necessary, such surrogacy clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

Sub-clause (2) of this clause provides that the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall apply, as far as may be, to all action taken by the appropriate authority or any officer authorised by it under this Act.

Clause 45.—This clause relates to protection of action taken in good faith.

This clause provides that no suit, prosecution or other legal proceeding shall lie against the Central Government or the State Government or the appropriate authority or any officer authorised by the Central Government or the State Government or by the appropriate authority for anything which is in good faith done or intended to be done in pursuance of the provision of this Act.

Clause 46.—This clause relates to application of other laws not barred.

This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 47.—This clause relates to power to make rules.

This clause provides that the Central Government may, by notification and subject to the condition of pre-publication, make rules for carrying out the provisions of this Act.

Clause 48.—This clause relates to power to make regulations.

This clause provides that the Board may, with the prior approval of the Central Government, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder.

Clause 49.—This clause provides that every rule, regulation and notification made under the proposed legislation shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 50.—This clause relates to transitional provision.

This clause provides that subject to the provisions of this Act, there shall be provided a gestation period of ten months from the date of coming into force of this Act to existing surrogate mothers' to protect their well being.

Clause 51.—This clause relates to power to remove difficulties.

Sub-clause (1) of this clause provides that if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the said Act as appear to it to be necessary or expedient for removing the difficulty. However, that no order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

Sub-clause (2) of this clause provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

FINANCIAL MEMORANDUM

Sub-clause (4) of Clause 16 and Clause 26 of the Surrogacy (Regulation) Bill, 2019 provides that for meetings of the National Surrogacy Board and State Surrogacy Board, the Members, other than *ex officio* Members, shall receive only compensatory travelling expenses for attending the meetings of such Boards. There will not be any financial implications except for the meetings of the National, State Surrogacy Boards and appropriate authorities which will be met out of the regular budget of the Central Government and State Governments.

2. The Bill does not involve any other expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 47 of the Bill seeks to empower the Central Government, by notification and subject to the condition of pre-publication, to make rules for carrying out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—(a) the minimum qualifications for persons employed at a registered surrogacy clinic under clause (iii) of section 3; (b) the manner in which a person shall store human embryo or gamete under clause (vii) of section 3; (c) the insurance coverage in favour of the surrogate mother from an insurance company under item (III) of sub-clause (a) of clause (iii) of section 4; (d) the number of attempts of surrogacy or providing of gametes under the proviso to item (III) of sub-clause (b) of clause (iii) of section 4; (e) the form in which consent of a surrogate mother has to be obtained under clause (ii) of section 6; (f) the number of oocytes or embryos to be implanted in the surrogate mother under section 8; (g) the conditions under which the surrogate mother may be allowed for abortion during the process of surrogacy under section 9; (h) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 10; (i) of the facilities to be provided, equipment and other standards to be maintained by the surrogacy clinics under sub-section (4) of section 10; (j) the period, manner and form in which a certificate of registration shall be issued under sub-section (1) section 11; (k) the manner in which the certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 11; (l) the manner in which an appeal may be preferred under section 13; (m) the qualifications and experiences to the Members as admissible under clause (f) of sub-section (2) of section 14; (n) the procedures for conducting an inquiry against the Members under sub-section (2) of section 18; (o) the conditions under which a Member of the Board eligible for re-appointment under section 21; (p) the other functions of the Board under clause (g) of section 22; (q) the manner in which the reports to be sent by the State and Union Territory Boards to the Board and the Central Government under clause (iii) of section 23; (r) the other functions of the State Board under clause (iv) of section 23; (s) the qualifications and experiences of the members as admissible under clause (f) of section 24; (t) the age of the person to be appointed as a member, referred to in clause (f) of section 24, and under the proviso to clause (b) of sub-section (1) of section 25; (u) the procedures for conducting an inquiry against the members under sub-section (2) of section 28; (v) the conditions under which the members of State Board eligible for re-appointment under section 31; (w) empowering the appropriate authority in any other manner under clause (d) of section 33; (x) the other powers of appropriate authority under clause (d) of sub-section (1) of section 34; (y) the particulars of the details of registration of surrogacy clinics, cancellation of registration, etc., in such format under sub-section (2) of section 34; (z) the manner of giving notice by a person under clause (b) of sub-section (1) of section 41; (za) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 43; (zb) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered under sub-section (1) of section 44; and (zc) any other matter which is to be, or may be, or in respect of which provision is to be made by rules.

2. Clause 48 of the Bill empowers the Board, with the prior approval of the Central Government, by notification, to make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for—(a) the fulfilment of any other condition under which eligibility certificate to be issued by the appropriate authority under sub-clause (d) of clause (v) of section 4; (b) the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of Members which shall form the quorum under sub-section (1) of section 16; (c) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 19; (d) the time and place of the meetings of the State Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 26; (e) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 29; and (f) any other matter which is required to be, or may be, specified by regulations.

3. The matters in respect of which the said rules and regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

SNEHLATA SHRIVASTAVA
Secretary General